TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 100.

FELIX DELLENIK, GEORGE SHIRAS, 3d, C. C. DICKEY, TRUSTEE, ET AL., APPELLANTS,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED JANUARY, 1901.

(16,078.)

(16,924.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 339.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. DICKEY, TRUSTEE, ET AL., APPELLANTS,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A—Circular to the stockholders of the Huron Copper Mining Company	25	15
B—Notice of Huron Copper Mining Company, October 15, 1891	27	16
Affidavit of C. C. Dickey	28	16
Lewis McMullen	31	18
George Shiras, 3d	38	21
George I. Whitney	39	23
Emanuel Levy	40	24
Felix Jellenik	41	24
Frank L. Stephenson	43	25
William S. Edwards	44	26
Subpœna	48	27
Marshal's return	49	28

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 19, 1899.

	Original.	Print.
Subpœna	50	29
Marshal's return	51	29
Motion for order of publication	52	30
Affidavit of F. O. Clark	54	31
Order of publication	57	32
Plea to jurisdiction by Huron Copper Mining Company	59	33
Appearance of defendant Samuel L. Smith	60	35
Proof of publication of notice	62	36
Stipulation for hearing of plea to jurisdiction	64	37
Stipulation for hearing of plea to jurisdiction	65	38
Order for hearing of plea to jurisdiction	66	39
Order taking plea under advisement	67	39
Decree dismissing bill of complaint	68	40
Opinion	69	40
Citation	72	42
Assignment of errors	73	43
Affidavit of service of citation, &c	75	44
Petition for appeal	76	45
Order allowing appeal and certifying question of jurisdiction	77	45
Bond on appeal	78	46
Clerk's certificate	80	47

1 To the honorable the judges of the circuit court of the United States for the western district of Michigan, northern division, sitting in equity:

Felix Jellenik, a citizen of the State of New York; George Shiras, 3d; C. C. Dickey, trustee; William M. Kennedy, citizens of the State of Pennsylvania; Lewis McMullen, trustee, a citizen of the State of Pennsylvania; George I. Whitney, a citizen of the State of Pennsylvania; Frank Stephenson, a citizen of Pen'a; Emanuel Levy, a citizen of the State of New York, and S. U. Trent, a citizen of the State of Pennsylvania, and William S. Edwards, a citizen of the State of West Virginia, bring this their bill of complaint against the "Huron Copper Mining Company," a corporation organized under the statutes of Michigan, being under an act to authorize the formation of corporations for mining, smelting, or manufacturing iron, copper, mineral coal, silver, or other ores or minerals, and for other manufacturing purposes, approved February 5th, 1853, and acts amendatory thereof, and doing business in said State, of which it is an inhabitant and resident; also against J. C. Watson, D. L. Demmon, citizens of the State of Massachusetts, and Samuel L. Smith, a citizen of the State of Michigan and a resident of the eastern United States judicial district within said State, and Johnson Vivian, a citizen of the State of Michigan and a resident of the western district of Michigan, northern division; and thereupon your orators (who file this bill of complaint in their own behalf and in behalf of such stockholders of the defendant company hereinafter named as may hereafter become parties hereto and contribute to the payment of costs) complain and say:

2 I.

That the defendant The "Huron Copper Mining Company" was duly organized as a corporation, under the laws of the State of Michigan, under the name of the "Houghton Mining Company," more than fifteen years since; that by a resolution of said company dated the seventeenth day of January, eighteen hundred and eighty, at a meeting of the stockholders of said company where all the stock of said company was represented and consenting thereto, it was voted to change the name of said corporation to the "Huron Copper Mining Company," and in accordance with said vote of the stockholders of said company amendatory articles of association were filed with the county clerk of said county, changing the name of said corporation as stated, and also setting forth that the amount of capital stock of said company was one million dollars, consisting of forty thousand shares of the par value of twenty-five dollars each, which amended articles of association so filed were dated the seventeenth day of January, eighteen hundred and eighty, and were received for record by the county clerk of Houghton county, Michigan, on the twenty third day of January, eighteen hundred and eighty, and were duly recorded by the clerk of said county in his office, as required by law, and that said corporation, having been duly organized under the laws of the State of Michigan, continued

to carry on business in said State from the time of its organization until the present time, and had its principal offices for business in Houghton, Houghton county, Michigan, in the said northern division of the western district of Michigan, and that the mines that have been operated for many years by said company and all of its other property are situated in the said county of Houghton, Michigan.

3 That the board of directors of said company consisted of J. C. Watson, D. L. Demmon, Samuel L. Smith, H. J. Stevens, and Johnson Vivian during the transactions hereinafter set forth, and that said persons have continued to be members of said board up to the present time, except H. J. Stevens, whom your orators have been informed has died within the last two years; that said J. C. Watson, D. L. Demmon, and H. J. Stevens were residents of the city of Boston, Massachusetts, said Watson being the president of the said company and the said Demmon its secretary and treasurer; that the said Samuel L. Smith resided at Detroit, Michigan, but was frequently in Boston, Mass.; that said Johnson Vivian resided at Houghton, Michigan, and was for many years the general manager of the mining operations and business of said company at its mining location in said Houghton county, Michigan.

II.

That your orator the said Felix Jellenik is the holder of one hundred shares of the capital stock of said company, which he acquired prior to the making of the assessment of five dollars per share hereinafter set forth, and has ever since held the same.

That your orator the said S. U. Trent is the holder of one hundred shares of said capital stock, which he acquired before the making of the three-dollar assessment hereinafter set forth, and has ever since held the same.

That your orator George Shiras, 3d, is the holder of four hundred and fifty shares of said capital stock, of which he acquired one hundred shares on the eighteenth day of April, eighteen hundred and ninety, and which he has ever since held; also one hundred shares acquired on the ninth day of October, eighteen

4 hundred and ninety, which he has ever since held; also fifty shares acquired on the thirteenth day of November, eighteen hundred and ninety, which he has ever since held; also one hundred shares acquired on the twenty-seventh day of May, eighteen hundred and ninety-one, which he has ever since held, and one hundred shares acquired on the fifth day of October, eighteen hundred and ninety-one, which he has ever since held.

That your orator the said C. C. Dickey, trustee, is the holder of ten shares of said capital stock, which he acquired on the ninth day of February, eighteen hundred and ninety-two.

That your orator the said William M. Kennedy is the holder of ten shares of said capital stock, which he acquired on the ninth day of February, eighteen hundred and ninety-two.

That your orator the said George I. Whitney is the holder of

fifty shares of said capital stock, which he acquired on the tenth day of October, eighteen hundred and ninety-one.

That your orator the said F. L. Stephenson is the holder of fifty shares of said capital stock, which he acquired on the — day of October (1891), eighteen hundred and ninety-one.

That your orator the said Lewis McMullen, trustee, is the holder of four thousand four hundred shares of said capital stock.

That your orator the said William S. Edwards is the holder of five hundred shares of said capital stock.

That your orator the said Emanuel Levy is the holder of eleven hundred shares of said capital stock, and

That your orator said Felix Jellenik is the holder of five hundred shares of said capital stock in addition to that enumerated above.

5

III.

Your orators allege that in the month of June, eighteen hundred and ninety, the said board of directors made an assessment upon the capital stock of said company of five dollars per share, aggregating in amount the sum of two hundred thousand dollars, payable on the seventh day of July, eighteen hundred and ninety, of which assessment notice was duly given to the said stockholders of said company, accompanied by a statement that said assessment would be sufficient to pay off all the indebtedness of said company and leave a cash balance in the treasury thereof of over thirty thousand dollars in addition to the unsold copper and other personal property of said company, and would leave the mines and property of said company free from debt.

IV.

Your orators further allege that subsequently, upon the twenty-fourth day of October, A. D. eighteen hundred and ninety-one, the said board of directors, without the advice, consent, or knowledge of the stockholders of said company, fraudulently conspiring together to defraud your orators and the other stockholders of said company, made an assessment upon all the stock of said company of three dollars per share, aggregating in amount the sum of one hundred and twenty thousand dollars, for the fraudulent purpose hereinafter more fully set forth.

V.

Your orators further allege that said board of directors (except the said Vivian), upon receiving the amount of said first assessment, which your orators are informed and believe amounted to two hundred thousand dollars, fraudulently, and for the purpose of defrauding your orators and the other stockholders of said

6 company, applied a portion of said assessment, the amount whereof is unknown to your orators, to the payment of spurious debts of said company and wasted and misapplied a certain other large portion thereof, the amount whereof is unknown to your

orators, diverting it from the treasury of said company and from the purpos for which said assessment was made and applying it to the personal uses of said directors and officers and their confederates.

Your orators allege that the said defendant, Samuel L. Smith, disclaims to your orators any personal participation in the fraudulent transactions herein set forth, though he was a member of the board of directors at the time of the transactions herein set forth. As your orators are not informed fully in that regard, they leave said defendant Smith to his strict proof as to the facts thereof; but your orators allege that the said J. C. Watson, D. L. Demmon, and H. J. Stevens resided at Boston, Mass., and were the chief conspirators and controllers of the action of the said board in the transactions herein set forth, and that it was at the branch office of said company at Boston, Mass., that said conspirators contrived and carried out the fraudulent transactions herein alleged.

VI.

That at the time of the making of the said assessment by said directors, upon the twenty-fourth day of October, eighteen hundred and ninety-one, as appears from the statement of said board of directors, there was sufficient assets of said company, exclusive of its mines and mining property, to pay all the legal indebtedness of said company.

VII.

7 That your orators are informed and believe and charge that the directors of said company are at present the holders of none, or at most a very small portion, of the capital stock of said company, except as they hold the stock purchased by them at the pretended sale, hereinafter set forth, as trustees for your orators and other stockholders; that said board of directors or their representatives disposed of the stock actually held and *bona fide* held by them at a high price before the making of the said several assessments, and have therefore but a nominal interest in said company, if any any interest; and your orators are also informed and believe and charge that said board of directors have so manipulated the assessments of said company as to enable them to speculate in the stock of said company to the detriment of the stockholders thereof, and have contracted fraudulent debts to themselves by means of false and illegal salaries, allowances, and commissions to themselves and by making fraudulent contracts for said company at extravagant prices, and by borrowing large sums of money for the said corporation at large and usurious interest, in which contracts and usurious loans the said directors and their confederates are interested as contracting parties with said corporation, and while acting as directors and trustees for the stockholders of said company have betrayed their said trust and mismanaged the affairs of said company for their own personal profit and advantage and to the detriment of your orators and the other stockholders, and by means of the said fraudulent contracts, usurious interests, salaries, commissions, al-

lowances, and spurious debts created by said board of directors and officers they have procured the property of said company to be seized and attached upon legal process, and have been and are depleting the treasury of said company and wasting the assets thereof and converting the same to their own use.

The said Johnson Vivian is excepted from the charge in this paragraph, and also the said Samuel L. Smith, if he shall show, as he asserts, as previously alleged, that he had no personal connection with the fraudulent transactions set forth herein.

VIII.

And your orators allege that the said board of directors (except the said Vivian and the said Smith, under the conditions above set forth) have continued said fraudulent practices and continued the mining of copper at an apparent loss by reason of said fraud and mismanagement for many years, and by false statements concealed the same from your orators and the other stockholders of said company, and your orators have only of late discovered said fraudulent practices and mismanagement on the part of said directors and the extent of the fraudulent purposes of said directors under the conspiracy herein set forth, which purposes have become more apparent and susceptible of proof by recent developments hereinafter more specifically set forth.

IX.

Your orators further allege that, in pursuance of said conspiracy amongst the said directors, they did on the ninth day of February, eighteen hundred and ninety-two, make a pretended sale of forty-one thousand sixty (41,060) shares of the capital stock of said company, being one thousand and sixty (1,060) shares of said capital stock more than the entire capital stock authorized by law, and more than the entire capital which said company has, for the non-payment of said assessment of three dollars per share. At said pretended sale J. C. Watson, the president of said company, purchased thirty-eight thousand three hundred and fifteen (38,315) shares of said stock, paying no money whatever for the same, as your orators are advised and believe and charge; and the said Watson is attempting to hold the shares of said stock so purchased for the benefit of himself and his codirectors and confederates, to the exclusion of your orators and other stockholders of said company; and the said Watson and his confederates are thereby attempting to acquire possession and control of all the property and assets of said defendant company, and to exclude your orators and the other stockholders of the defendant company from any interest whatever in the same; and your orators are advised, believe, and charge that the whole arrangement and the acts done by the said directors and officers in the matter of said alleged assessments and pretended sale were intended to defraud your orators and the other stockholders of their interest in said company; and your orators charge and here show to this honorable court that the said officers

and directors, being trustees for your orators and other stockholders, could not in equity and good conscience acquire and hold the title to said thirty-eight thousand three hundred and fifteen shares of stock of said company to the prejudice of your orators and other stockholders, the *cestui que trustent* of said directors; that at said pretended sale your orator C. C. Dickey, trustee, purchased ten shares of said capital stock, and your orator William M. Kennedy purchased ten shares of said capital stock; for which stock the said president and directors compelled the said C. C. Dickey to pay, and he did pay, three dollars and seventy-five cents per share, and the said William Kennedy to pay, and he did pay, three dollars and fifty cents per share, and they now hold said shares of stock.

X.

And your orators further allege that the said directors and officers, in pursuance of the said conspiracy and for the purpose of defrauding your orators and other stockholders of said company, have caused the property of said company in the State of Michigan to be seized by virtue of legal process, as set forth in the seventh paragraph of said bill of complaint, and have procured the same to be sold upon said legal process for the purpose of acquiring the same and excluding your orators and other stockholders from any interest therein; that the purpose of making said fraudulent assessment and said pretended sale of said stock was to exclude your orators and other stockholders from any right of inquiry into the affairs of said company and into the management thereof by said directors and officers, and that the purpose of said directors and officers in causing the property of the defendant to be seized and sold by a legal process (and, as your orators are informed and charge, for spurious and fraudulent debts) is to extinguish the title of said corporation and of its said stockholders to said mining company and to vest the same in said directors and their confederates; that said pretended sale of said stock was made against and in defiance of the protest of your orators and other stockholders of the defendant company, and upon notice given to said directors, at the time and place of said sale of stock, of the fraudulent character of said alleged assessments and of the said proposed sale, and said notice was given to all purchasers before the making of said pretended sale.

XI.

Your orators are informed and believe and charge that the said directors, who have custody and control of the books, papers, and accounts of said company, in pursuance and furtherance of the said conspiracy and for the purpose of deceiving your orators and the other stockholders of said company, and preventing them from acquiring a knowledge of the true state of the affairs of said company, and uncovering and disclosing the fraudulent practices of said directors, have before and after the pretended sale made by the directors refused to allow the said stockholders of said company to

examine said books, accounts, and papers, and they refused to furnish them with any information relative to the business and affairs of said company, and the directors do still so refuse, contrary to the provisions of the statutes of the State of Michigan under which said corporation is formed.

XII.

Your orators charge and believe that the said directors and officers are conspiring and confederating with other parties unknown to your orators to deplete and devastate the entire property and assets of the defendant company for the purpose of acquiring to themselves the said property and the entire stock of said company, and by means of said covin and deceit practiced by said directors to defraud and deprive your orators and the said other stockholders of the said company of their entire stock, and of the moneys paid for said stock, and of the moneys paid in upon the first assessment hereinbefore mentioned.

XIII.

12 And your orators allege that, notwithstanding the said assessment of five dollars levied upon the said stock of said company June —, eighteen hundred and ninety, payable July seventh of that year, amounting to two hundred thousand dollars, and notwithstanding the said additional assessment of three dollars per share upon the said stock October twenty-fourth, eighteen hundred and ninety-one, amounting to one hundred and twenty thousand dollars, which were made upon notices to your orators and to the other stockholders that said assessments would not only be ample to pay all the indebtedness of the said company, but would leave its property free and clear of all indebtedness and a large balance in the treasury, and notwithstanding said defendants, Watson and Demmon, in the making sale of said stock under the said three-dollar assessment required your orators, C. C. Dickey, trustee, and William M. Kennedy, trustee, and other stockholders not in the conspiracy with the defendants, to pay the full amount of the assessment on such sale, they, the said Watson as president and Demmon as secretary and treasurer, either fraudulently sold the said stock upon said sale to themselves individually or to their co-conspirators for a mere pittance, without realizing the assessment thereon, and now fraudulently claim to be the owners thereof by virtue of said fraudulent sale, or they have realized the money thereon and squandered the same, and have allowed the indebtedness of said company to be put in judgment against your orators in said Houghton county, Michigan, with the fraudulent intent through and by that means to buy in and absorb the said property and render valueless the said stock of your orators, and in carrying out said scheme said defendants permitted the following judgments to be taken against the defendant company, to wit:

13	One in favor of Louis Hennes and Joseph Hennes	$19,036.51
	Costs	36.51
	One in favor of Joseph F. Hambitzer	864.97
	Costs	34.34
	One in favor of Hancock Chemical Company	3,686.33
	Costs	48.50
	One in favor of Joseph Wertin *et al.*	1,210.19
	Costs	36.07
	One in favor of Johnson Vivian	14,957.23
	Costs	105.05
	One in favor of Graham Pope	13,559.72
	Costs	98.03
	One in favor of St. Mary's Canal Mineral Land Co.	1,358.85
	Costs	36.77
	One in favor of John Manderfelt	2,777.49
	Costs	43.92
	One in favor of James H. Seager	7,500.11
	Costs	67.64
	One in favor of the Franklin Mining Co.	5,814.82
	Costs	59.48
	One in favor of Johnson Vivian & Stephen L. Prince	137.89
	Costs	30.70
	One in favor of the W. Bingham Co.	874.54
	Costs	34.50
	One in favor of the Excelsior oil tank line	1,138.36
	Costs	30.70
	One in favor of the Atlantic Dynamite Co.	360.52
	Costs	38.50
	One in favor of Daniel L. Demmon	106,213.74
	Costs	38.10
	Total	$180,230.08

The total amount of said judgments is $180,230.08, $106,251.84 of that amount being a judgment taken by said defendant Demmon fraudulently to himself, growing out of illegal transactions between himself as a director and officer of the said company, and in fact the chief controller and manipulator of its affairs for many years last past.

And your orators allege that all of the said judgments were obtained against the said defendant company on the same day, to wit, on the 30th day of December, 1891, by consent between the attorneys appearing for defendant company and for all of said judgment creditors, no contest being made as to any of them, and the judgment for the $106,213.74 was fraudulently procured against the defendant company by the said Demmon, then acting as director and secretary and treasurer and chief manipulator of the com-
14 pany, as aforesaid, he in fact controlling the company and the board, and by that influence and control he prevented any investigation of the honesty and legality of the amount so put

in judgment against the said defendant company in his behalf; and your orators allege that all of the said judgments except the one so procured by the said Demmon were assigned to James B. Sturgis, trustee, of Houghton, Michigan, and on the 7th day of May, 1892, the mining property of the defendant company was sold under said judgment so assigned to the said Sturgis, and a certificate of sale of the said property was given by the sheriff of the said county of Houghton, Michigan, to the said Sturgis, trustee, upon the said 7th day of May, 1892.

And your orators further allege that upon the 21st day of August, 1893, W. A. Dunn, sheriff of Houghton county, Michigan, in pursuance of said certificate of sale, executed a sheriff's deed to said James B. Sturgis, trustee, the consideration price stated in the deed being sixty-two thousand, six hundred and sixty-seven dollars and thirteen cents ($62,667.13), a portion of the judgment debts having been paid or reduced by sale of personal property of the defendant company and being a conveyance of the south half of section one (1) and all of section two (2), township fifty-four north, range thirty-four west, Houghton county, Michigan, which was the mining property of the Huron Copper Mining Company above referred to. This deed was recorded in the office of the register of deeds of Houghton county, Michigan, August 24th, 1893, and so far as the records of the office of said register of deeds of said county now show
15 there has no transfer of title been made by the said James B. Sturgis, trustee, of the property in question to any other person, but whether or not there are any private agreements as to said property existing between the said trustee and any of the said defendants as to the conveyance of the said property to the said defendants or their confederates your orators are at present unable to state, though they have delayed filing this bill, as hereinafter alleged, for the purpose of learning more as to the intentions of the said defendants as to the said property.

And your orators further allege that they filed their bill of complaint in this court September 15th, 1892, similar to the one herein contained against said defendants; that a plea and demurrer was interposed by the defendants Watson and Demmon, and a hearing was had thereon, by consent, at Grand Rapids, Mich., before Hon. Henry F. Severens, district judge, when it was held by said judge that the bill was defective in its jurisdictional allegations, and on that account the court declined to proceed further until a bill was filed having proper allegations, giving the court jurisdiction to act.

This hearing was had in the spring of 1893, and your orators have delayed the filing of this bill with the desire to gain further information as to the fraudulent transactions of the defendants and their purposes in allowing judgments to be taken against the said defendant company on the sale of the said mining property, or whether the said defendants would redeem said property from such sale within the fifteen months allowed by law to do so.

16 XIV.

And your orators allege that the shares of stock in the said defendant company are personal property, and its location is where the company is incorporated and nowhere else, and that the *locus in quo* of the stock of the defendant company has been since its incorporation at Houghton county, Michigan, that being its principal office for business and place of incorporation, and this bill is filed to remove any incumbrances, lien, or cloud upon the title of your orators in said personal property thus located caused by the fraudulent acts of the defendants, as herein alleged, and for such other and further relief as the nature of the case shall require.

XV.

And your orators allege that they file this bill of complaint in their own behalf because the said corporation, acting fraudulently through the said board of directors and controlled particularly by the said defendants, Watson and Demmon, refused to your orators any information with regard to the affairs of the company or to allow them to see the books or procure a statement from the books, and because there is no other avenue of relief, as there are no agents of the company authorized to act for the relief of the stockholders except the defendants thus fraudulently conspiring, as previously alleged, to break down and ruin the value of the stock of the said defendant company.

And your orators further allege that the said complainant, Felix Jellenik, acting in his own behalf and as attorney for Emanuel Levy, complainant, and as attorney for George Shiras, 3d, S. U. Trent, George I. Whitney, and Frank Stephenson, applied to said defendants, on or about the first day of November, 1891, for
17 leave to examine the books of said defendant company for the purpose of determining the true state and condition of said defendant company, and that said demand to so examine the books was refused; that by reason of said refusal he, said Jellenik, acting for himself and as attorney for said parties, refused and advised the said clients to refuse to pay said three-dollar assessment; and your orators allege that it is impossible to state specifically the manner and time and amounts of money lost to the stockholders by the said fraudulent conspiracy, as set forth, and that discovery is necessary and the production of the books and papers of the defendant company in order to inform your orators and this honorable court of the true state of the affairs of the said defendant company and of the manner and means employed by said directors in their said conspiracy, and that the refusal to show the books, as aforesaid, when asked so to do, your orators allege, was to conceal such fraud and conspiracy that would appear in the transactions entered upon said books, as they are informed and believe and charge the fact to be.

XVI.

And your orators further allege that the complainant William S. Edwards, on the morning of February 11th, 1892, at eleven o'clock, went to the office of defendant Demmon, secretary and treasurer of the defendant company, at 19 Congress street, Boston, Mass., which was also the office of the defendant company, and there requested of the said Demmon to give him a statement of the number of shares of stock in the said defendant company which had been issued by the said company subsequent to the 9th of February, 1892, and preceding the issue of certificate of stock number 3372, for ten shares,
made to C. C. Dickey, trustee, which was dated February-
18 10th, 1892, and also requested said Demmon to allow him to examine the books and accounts of said company and the minutes of proceedings of all meetings of the directors and stockholders of the company, the said complainant, Edwards, stating to said Demmon that he was acting for himself as well as attorney for the said C. C. Dickey, trustee. Both of these requests said Demmon refused, and said that he would not even entertain such a request unless it were presented to him formally in writing. Said Edwards then made a demand for the examination of the books of the company in writing, and received a written refusal from the said Demmon in the following language:

"BOSTON, *Feb.* 12, 1892.

William Seymour Edwards, att'y for C. C. Dickey, trustee, and William M. Kennedy, stockholders, etc., of Boston, Mass.

DEAR SIR: I have your communication of the 12th, notifying me, as secretary of the Huron Copper Mining Company, that you desire to examine the stock books of the company, the books of account, ledgers, etc., minutes, and records of all stockholders' and directors' meetings, etc., and to make a full and thorough inspection and examination of all the books and records and of the financial condition of said company as therein and thereby exhibited, and that you desire to make an examination at once with your experts and accountants. I regret that it is not in my power to grant the same.

Very resp'y yours, D. L. DEMMON, *Secretary.*"

Your orators further allege that the said complainant, Edwards, on the 9th of February, 1892, attended the sale of the stock of the
Huron Copper Mining Company on the sale under the
19 assessment of three dollars a share, as aforesaid, at the defendant company's office, at 19 Congress street, Boston, Mass., at the hour of twelve noon; that said sale was held in the private office of said defendant, Demmon; that the sale was conducted in a very hasty and precipitate manner; that the public were not allowed more than six feet square of standing room; that no one was present besides said complainant, Edwards, and three other persons, except the officers of said company and their clerks, and said direct-

ors of the said company or their clerks did all the bidding on the said stock except the bids made for twenty shares purchased, ten by C. C. Dickey, trustee, and ten by William M. Kennedy, as above set forth; that at the time of making such sale the said Edwards kept a careful record of the number of shares offered and sold at that time, and that the stock thus sold was as follows:

H. C. Sears, for Wm. M. Kenne-y, complainant.....	10 shares
C. C. Dickey, trustee, compl't, for J. H. Seymour.....	10 shares
—— Bacon, clerk in the office of the defendant company.....	2,725 shares
J. C. Watson, president of said company.....	38,315 shares
Total.....	41,060 shares

being 1,060 shares more stock than the company possessed, the entire capital stock of said company being 40,000 shares. Thus, your orators allege, all the stock sold at such sale except the twenty shares sold to complainants Kennedy and Dickey *were* sold to the employees and managing agents of the defendant company, and all the stock thus bid in by said employees of the defendant company was in equity a purchase for the said company. Notwithstanding such fact, complainants allege that the said clerk, Bacon, bid in the said stock in the interest of the defendants Demmon and Watson and their conspirators, and the said Watson, then president of the said company, bid in said shares for the same purpose; and now said Demmon and Watson and their co-conspirators claim to own all of said shares so bid in except the twenty shares to the said Kennedy and Dickey, trustees, in fraud of the defendant company and of your orators' rights.

This stockholders' sale last mentioned was upon the three-dollar assessment previously referred to, which assessment was fraudulently called, as said defendants Watson and Demmon, together with H. J. Stevens, then directors, had previously assured the stockholders that upon the payment of the five-dollar assessment, payable July 7th, 1890, it would leave a balance of thirty thousand dollars in the treasury, which assessment was paid by your orators then owning stock in good faith relying upon such statement. That such statement was made is admitted by the said Watson, Demmon, and Stevens, as directors, in a circular sent out to the stockholders of the defendant company as an excuse for calling the additional three-dollar assessment, a copy of which circular so sent out is hereto annexed and marked Exhibit "A" and made a part of this bill of complaint, and on the 15th of October, 1891, defendant Demmon, as secretary, issued a notice to the stockholders from the office of said company, which notice is hereto attached and marked Exhibit "B" and made a part of this bill of complaint, to which reference is hereby made.

21

XVII.

And your orators further allege that this suit is not collusively brought in the name of the complainants as a means of conferring jurisdiction on this court, and that reasonable efforts were made by the complainants to secure fair and honest dealing on the part of the directors with your orators and the other stockholders, and failure to procure the same, as previously set forth, is the cause of your orators commencing this action in their own name; and your orators further allege that they were stockholders at the time of the transactions of which they complain, or that their shares have devolved upon them since by operation of law, as shown by the allegations previously set forth.

XVIII.

Your orators further allege that unless the management of the property and business of said company be taken by your honor out of the hands of said directors and officers, and they being enjoined against any interference or meddling with the property and assets of said company and with its business, your orators and the other stockholders of said company will be wholly deprived of their interest in said company under their stock in said company and in its property and effects. They therefore pray:

First. That a receiver may be appointed by this honorable court to take charge and possession of all the property and assets of the defendant company and wind up the business of said company, and make sale of its property, as upon full examination made of the affairs of said company by this honorable court shall appear to be most advantageous to your orators and the other stockholders.

22 Second. That the said directors and officers, their agents, servants, attorneys, and representatives, may by preliminary injunction, under the seal of this honorable court, hereafter to be made perpetual, be restrained and enjoined from in any manner intermeddling or interfering with the property and business of said defendant company; from levying upon, attaching, seizing by execution, or selling, or causing to be levied upon, attached, seized by execution, or sold, any of the property of said company, and from prosecuting by any mesne or final process any claim or claims whatever against said company, and also from cancelling any of the stock of your orators, as herein set forth and described, and issuing new stock therefor to the pretended purchaser thereof under the pretended sales for delinquent assessment, as previously set forth, and if such cancellation has been attempted by the said defendants or any of them and new certificates issued therefor to the said defendants or any of them or their confederates, that they be restrained from further transferring the same upon the books of said company until the final order of this court.

Third. That an account may be taken under the direction of this honorable court of the loss occasioned to said company and its stockholders by means of the said covin, breach of trust, misman-

agement, and neglect of duty, and embezzlement of the said directors and their said confederates, and of the profits made by said directors and officers or any of them, and of their confederates or any of them by means of their said covin, deceit, fraud, unlawful confederacy, conspiracy, and misappropriation of assets, and that they, the said directors and officers, and every of them be or-
23 dered and decreed to pay over to the said receiver or this honorable court the entire sum or sums so ascertained.

Fourth. And that this honorable court may adjudge and decree that said pretended sale made on the 9th day of February, 1892, was a nullity; that no title passed by said pretended sale to any of said stock; that the said Watson, Demmon, and their codirectors and confederates held in trust the stock which they pretended to acquire at said sale for your orators and the other stockholders of said company, and that your orators and the other stockholders of said company do now hold respectively in said company the respective shares of stock which they held prior to the date of said sale, and that by the decree of this court any lien or cloud upon the title of the said stock of your orators may be removed therefrom.

Fifth. That this honorable court grant unto your orators such other and further relief as the exigencies of the case may require and as to your honor shall seem meet in the premises.

Sixth. May it please your honor to grant unto your orators the writ of subpœna of this honorable court, or such other process as your honor may deem appropriate in the premises, directed to the said "The Huron Copper Mining Company," and the said J. C. Watson, S. L. Smith, D. L. Demmon, and Johnson Vivian, commanding them and every of them to appear in this honorable court, according to the practice thereof, and answer the premises and stand to and abide what the court shall in equity and good conscience decree; and your orators will ever pray, etc.

FELIX JELLENIK.
GEO. SHIRAS, 3RD.
W. S. EDWARDS.
WILLIAM M. KENNEDY.
S. U. TRENT.
EMANUEL LEVY.
FRANK STEPHENSON.
GEO. I. WHITNEY.
C. C. DICKEY, *Trustee.*
LEWIS McMULLEN, *Trustee.*

CLARK AND PEARL,
Solicitors and of Counsel for Complainant.

24 STATE OF PENNSYLVANIA, }
County of Allegheny, } ss:

Personally came before me, a notary public in and for said county, Geo. Shiras, 3rd, who, being duly sworn, deposes and says that the statements contained in the foregoing bill of complaint are true, as he verily believes.

GEO. SHIRAS, 3RD.

Sworn and subscribed before me this 15th day of March, 1894.

ROBERT T. McELROY,
Notary Public.

[SEAL.]

25 "EXHIBIT A."

To the stockholders of the Huron Copper Mining Company:

After consultation with the eastern and lake creditors of the Huron Copper Mining Company, your directors have decided to levy an assessment of $3.00 per share upon the capital stock of the company, payable at the office of the company, in Boston, October 24, 1891, with interest at six per cent from that date.

In June, 1890, an assessment of $5.00 per share was levied, payable July 7th following. It was thought at the time that this assessment would pay all the debts and leave a balance of assets of over $30,000. The product, however, fell off so rapidly that it was impossible to operate the mine without using a portion of this assessment for that purpose, and therefore a part of the indebtedness remained unpaid. The present unsecured indebtedness of the company is, in round numbers, $160,000, to offset which we have supplies on hand and rock broken in the mine valued at $95,000. This is exclusive of mining machinery and plant, which is valued at $161,559.30, and of the mine itself.

December 31, 1890, the total liabilities of the company, as per published report, amounted to $220,184.34. To offset this there were cash and copper (valued at fourteen cents per pound) amounting to $140,597.02, in addition to which there were on hand at the mine supplies and rock ready for hoisting valued at $80,449.37. These latter items were not then and are not now available for the payment of debts, but are absolutely essential for the working of the mine.

Since that time we have added to the amount of supplies on hand $14,759.14, and there has been a shrinkage in the estimated value of copper amounting to about $18,000. There has also been an apparent deficiency in carrying on the business of the company of about $53,000 between January 1st and October 1st, 1891.

A large portion of this loss has been owing to the fact that the ground opened was not as productive as expected and hoped for. These openinge were principally in the northerly part of the mine. Within a short time, however, the mine has been examined by several well-known mining experts of Lake Superior, who unhesitatingly give their opinion that the southerly end of the mine, where there is abundant ground, will pay a profit for working, and all openings now made are in that direction.

In June last the drafts of the company went to protest, as the supplies at the mine could not be used to raise money on, and the amount of copper produced was not sufficient to pay running expenses at the mine. The lake creditors attached the real and personal property of the company last June, since which time it has been operated by your agent with the consent of the attaching creditors.

Your directors have strenuously worked to avoid the necessity of calling an assessment, but they have been unable to accomplish this result, and they deem it their duty not to abandon the prop-

erty to the creditors without giving the stockholders the opportunity of preserving it.

26 The payment of the amount called for will relieve the company from its present difficulties and leave a balance of assets estimated at over $50,000 (not including mine, mining machinery, and plant), which will be necessary for the working of the mine, but will not be available to raise money upon.

Your directors are of the opinion that this assessment will result in benefit to all stockholders, inasmuch as it will relieve the property from attachments and put the directors in position to negotiate with parties who are anxious for consolidating several properties at the lake, of which the Huron is an important one. Said consolidation would be greatly to the advantage of all concerned.

J. C. WATSON,
H. J. STEVENS,
D. L. DEMMON,
Directors.

27 "EXHIBIT B."

Huron Copper Mining Company, 19 Congress street.

BOSTON, MASS., *October* 15, 1891.

Notice is hereby given that at a meeting of the directors of this company held this day the following resolution was adopted, viz.:

"Resolved, That an instalment of three dollars per share of the capital stock of the Huron Copper Mining Company be, and hereby is, called in, and that the same is payable at the office of the company, in the city of Boston, Mass., on Saturday, the twenty-fourth day of October, 1891, with interest at the rate of six per cent. after that date, and that no stock be transferred on the books of the company after that date unless this instalment shall be paid thereon."

By order of the directors.

D. L. DEMMON, *Secretary.*

28 In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division.

FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING CO. ET AL. } In Equity.

C. C. Dickey, of lawful age, having been duly sworn, deposes and says that he is a citizen of the State of Pennsylvania, residing in the city of Pittsburgh, county of Allegheny, and is the holder in trust for certain persons of 10 shares of the capital stock of said company acquired on the 9th day of February, 1892; that he acquired said stock through his representative and attorney, William S. Edwards, who, as he is informed, purchased the same at a secret

sale of said stock for the non-payment of the three-dollar assessment of D. L. Demmon, in the city of Boston, paying therefore the sum of three dollars and seventy-five cents per share; and that he is informed that his said attorney since said sale has demanded of the directors and officers of said defendant company, at a proper time during the business hours, the right to examine said books and papers of said defendant company; which demand was refused. Deponent further says that he is informed and believes that at said pretended sale there were sold for the non-payment of the three-dollar assessment 41,060 shares of said capital stock, being 1,060 shares more than the whole capital stock issued by said company or authorized to be issued by said company under the laws under which it was incorporated, and being an overissue of said stock of said company through the fraud, neglect, or mismanagement of said directors.

Your deponent is therefore unable to say whether the shares of stock purchased of him are part of said overissue or whether
29 they are a part of the original stock of said company, and he prays that a discovery be made by said directors and the production of the books and papers of said company; in order that it may be determined whether said issue is or is not legal stock of said company.

Deponent has been informed, advised, and believes that the personal property, including part of the mining equipment of the Huron Copper Mining Company, has been sold on judgements obtained at and prior to the levying of the last assessment, and your deponent avers and charges that the said assessment of $120,000 *dollars* was fraudulent and void and levied for the purpose, as he now believes, of divesting the interest of the old stockholders and for no other purpose.

Your deponent further charges that the stock he now holds in said company, on which he duly paid the last assessment, was fraudulently issued to him, and the money paid thereon was neither received or used in meeting the obligations of said company, but, on the contrary, was retained by the directors of said company for their own use.

And your deponent is further advised, informed, and believes that upon all the other shares of stock sold on the 9th day of February, 1892, he and William M. Kennedy, who bought 10 shares, were the only parties who paid any money for the same, the rest of the stock being taken by J. C. Watson, president of the said company, and by his representatives under the color of purchase, but in reality without any consideration whatsoever, and as such was a fraud upon the old stockholders and upon your deponent.

Deponent says that he is one of the parties plaintiff, and that he is advised, informed, and believes that, unless your honors appoint a receiver to take charge of the affairs and property of said company, that said board of directors will, pursuant to their fraudulent scheme heretofore contrived and now being attempted to be
30 carried out, entirely deprive your deponent and the other stockholders of said company of all interest in the property

and assets of said company, and that, unless an injunction or other proper mandate or process be issued by your honorable court, under its seal, restraining said directors from intermeddling in the affairs of said company, all the property and assets of said company will be acquired by said directors, to the detriment of your deponent and the other stockholders of said company, or be entirely lost or wasted; and further deponent saith not.

C. C. DICKEY.

Sworn and subscribed before me this 28th day of December, A. D. 1894.

ROBERT T. McELROY,
[SEAL.] *Notary Public.*

31 In the Circuit Court of the United States for the 6th Circuit, Western District of Michigan, Northern Division.

FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING COMPANY ET AL. } In Equity.

Lewis McMullen, of lawful age, being duly sworn, deposes and says that he is a citizen of the State of Pennsylvania, residing in the city of Pittsburgh and the county of Allegheny, and he is holder as trustee for certain parties of 4,400 shares of the capital stock of the Huron Copper Mining Company, a corporation duly organized under the laws of the State of Michigan, as follows:

No. of certificate.	No. of shares.	Date of transfer to deponent.
3258	100	October 12th, 1891.
3038	100	October 10th, 1891.
3048	100	October 10th, 1891.
3039	100	October 10th, 1891.
3037	100	October 10th, 1891.
3036	100	October 10th, 1891.
3035	100	October 10th, 1891.
3068	100	September 26th, 1891.
2919	100	July 22d, 1890.
2851	100	February 3d, 1892.
2846	100	January 14th, 1891.
3232	100	October 20th, 1891.
2702	100	May 29th, 1890.
2645	100	January 23d, 1890.
2639	100	May 26th, 1890.
2502	100	May 14th, 1890.
32 3272	100	October 16th, 1891.
3308	100	October 21st, 1891.
2078	100	Oct. 7th, 1888.
2421	100	May 7th, 1890.
2380	100	May 5th, 1890.
3072	50	December 22d, 1891.
3073	50	February 8th, 1892.
3276	100	February 8th, 1892.
3277	100	December 8th, 1891.
3278	100	February 8th, 1892.
3279	100	February 8th 1892.
3280	100	February 8th, 1892.
3343	500	February 4th, 1892.
3344	500	February 4th, 1892.
3319	100	February 5th, 1892.
3320	100	February 5th, 1892.
3321	100	February 5th, 1892.
3322	100	February 5th, 1892.
3323	100	February 5th, 1892.
3324	100	October 27th, 1892.
2369	100	May 6th, 1890.

That your deponent is one of the parties to the bill of complaint filed by Felix Jellenik *et al.* against The Huron Copper Mining Company in this case; that he is informed and believes that the directors of said company have been for some years manipulating the affairs of said company by the making of fraudulent assessments and the creation of spurious debts, and by other fraudulent acts so

devastating and wasting the property and assets of said company as to make said company apparently insolvent, and that this has been done by a conspiracy among the majority directors, who
33a reside in the city of Boston, for the purpose of acquiring control in their own right as individuals of all the mining property and assets of said company to the detriment of your deponent and *cestuis que trustent* and other stockholders of said company; and your deponent further says that he is advised, informed, and believes that in furtherance of said scheme to acquire control of the assets of said company by said directors for the purpose of depriving the deponent and *cestuis que trustents* and other stockholders of the stock and interest in the property and assets of said company said board of directors caused an assessment of five dollars to be made and levied upon the stock of said company, which assessment was paid by the stockholders thereof on July 7th, 1890, and about the sum of two hundred thousand dollars was received by said board of directors from said assessment, which sum of money or a large part thereof was misapplied to the payment of spurious debts or to other purposes than those which the assessment was intended for or properly applicable and converted the same or a large portion thereof to their own use; that said directors thereupon, claiming that said sum of money received from said assessment was insufficient for the payment of the debts of said company, proposed to make and levy, and did make and levy, in furtherance of their said unlawful and fraudulent scheme, a second assessment of three dollars per share upon the stock of said company, which assessment was payable upon the 9th day of February, 1892; that said directors well knew at the time of making said assessment of three dollars per share that the stockholders of said company would fail to pay the same, which would enable said directors to sell the same for non-payment of said assessment, and thereby enable said directors to get into their possession and control as individuals all the
34 stock, property, and assets of said company, and prevent inquiry into the manner in which the affairs of said company have been mismanaged and the assets and property of said company wasted and converted by said directors to their own use; that in pursuance of said unlawful and fraudulent design and scheme so contrived, as aforesaid, by said directors, the said directors, by themselves, their representatives and confederates, exposed and caused to be sold secretely, in the office of D. L. Demmon, secretary and treasurer of said company and one of the parties to said scheme, on February 9th, 1892, all the capital stock of said company, together with an unlawful issue of 1,060 shares more than the capital stock of said company, of which stock 38,315 shares were purchased by J. C. Watson, president of said company, and in furtherance of said conspiracy 2,725 shares were bought by the representatives of said Watson or his other associates and confederates in said conspiracy; that neither of said purchasers paid any money upon said purchase, or at most a very small part thereof, and that your deponent is advised, informed, and believes that said Watson is holding said stock so purchased by him for his own benefit and the

benefit of said directors and their confederates, and that said pretended sale was a consum-ation of the said conspiracy, as hereinbefore set forth; that your deponent is also advised, informed, and believes that said directors have caused legal process to be issued against said company for spurious debts or for debts legally due to creditors resident in the State of Michigan, which should be paid out of the money received by said directors from the five-dollar assessment, and which was misapplied and diverted by said directors from said Michigan creditors, and have caused the property and assets of said company to be attached and levied upon for the purpose of
35 acquiring legal title to the property and assets of said company in their own right and to the exclusion of your deponent and the other stockholders; that your deponent has been unable by counsel, through the refusal of the board of directors prior to the levying of said assessment and since the alleged sale of stock, to examine the books or make any investigation of the solvency of said company, and your deponent is therefore unable to state specifically the acts of said directors in wasting and depleting the treasury and diverting the moneys paid in on said assessment, and discovery is therefore necessary to be made by said directors and the officers of said company, and the production of said books and papers of said company is necessary to a determination of this case upon its merits.

Your deponent, in view of the premises, says that unless your honors interfere by the appointment of a receiver and the issuing of an injunction and such other writs or processes and remedies as are prayed for in said bill of complaint, that your deponent and your *cestuis que trustent* and other stockholders of said company would be entirely deprived of all interest in said company and in the property and assets thereof and of the stock that they hold; all of which affiant is informed and believes to be true.

LEWIS McMULLEN.

Sworn and subscribed before me this 28th day of December, A. D. 1894.

[SEAL.] ROBERT T. McELROY,
Notary Public.

36 The Circuit Court of the U. S. for the 6th Circuit, Western District of Michigan, Northern Division.

FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING CO. ET AL. } In Equity.

George Shiras, 3d, of lawful age, being duly sworn, deposes and says that he is a citizen of the State of Pennsylvania and a resident of the city of Pittsburgh, in said State.

That your deponent is the owner of 450 shares of stock in the Huron Copper Mining Co., a corporation organized under the laws of Michigan, and that he acquired said stock as follows:

Certificate.	Shares.	Purchased.
No. 2304	100	April 18th, 1890.
No. 3012	100	October 9th, 1890.
No. 3062	50	November 13, 1890.
No. 3150	100	May 27th, 1891.
No. 3205	50	October 9th, 1891.
No. 3207	50	October 9th, 1891.

That said certificate No. 2304, for 100 shares, was purchased before the levying of the $5 assessment of July 7th, 1890, and was paid upon the false representation of the Boston directors that said assessment was for the payment of valid debts and would make the company entirely solvent and in addition leave a surplus of $30,000 in the treasury of said company; that your deponent has since been informed and believes that said $5 assessment, aggregating the sum of $200,000, was for fraudulent, secret, and invalid debts, and that the assessment so collected was unlawfully diverted from the purposes for which it was collected, and was also applied to fictitious or invalid obligations, and that an examination of the books
37 of the said company will so prove.

Your deponent further avers that the remaining 350 shares of stock were acquired by him in the open market before the levying of the second assessment of $3 per share and in the belief that said company was solvent and free from debt, and that only subsequent thereto and at or about the time of receiving notice of said second assessment, aggregating $200,000, did he obtain information showing the fraudulent and dishonest methods of the said Boston directors, and that he then and thereupon, under date of October 7th, 1891, addressed a communication, in writing, to the secretary and treasurer of said company in Boston refusing to pay said second assessment, due and payable as alleged upon October 24th, and instead thereof demanded a return of the money and assessment hitherto paid, giving express notice that a refusal to receive back the stock and rescind said sale would lead your deponent to institute such proceedings as were necessary to protect him in his rights and at the same time establish the truth of the allegations contained in said communication; that the directors of said company evaded said demands and required specific proof; whereupon said deponent, acting in conjunction with other dissatisfied stockholders, demanded an examination of the books of said company, which request was refused and has since been refused, in flagrant violation of the laws of Michigan under which said company is incorporated.

Your deponent further avers that the alleged sale of his stock on February 9th, 1892, was fraudulent and in consummation of a conspiracy on the part of the Boston directors to divest the interest of

all of the stockholders of said mine, that they might acquire
38 title to the stock and assets of said mine and prevent any inquiring into the fraudulent and dishonest diversion of funds hereinbefore charged; and your deponent avers that all of said stock excepting twenty shares was unlawfully acquired by the said Boston directors, and that they paid little or no money for the same, and that said acts were in pursuance of and in consummation of a conspiracy to cheat, defraud, and deprive deponent and all the other stockholders in said company of their lawful interests therein and prevent an inquiry into the expenditures of the moneys hitherto contributed by your deponent and other stockholders.

And your deponent further avers that subsequent to the said fraudulent sale of his stock, and notwithstanding the said sale, all the personal property, together with the mine itself, have been sold at judicial sale, showing that the assessment paid by your deponent was illegally diverted, and that upon the alleged sale of his stock and that of the other stockholders no money could have been paid by the alleged purchasers thereof other than for the twenty shares bought by said Kennedy and Dickey.

GEO. SHIRAS, 3D.

Sworn and subscribed before me this 28th day of December, A. D. 1894.

ROBERT T. McELROY,
[SEAL.] *Notary Public.*

39 FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING COMPANY ET AL.

George I. Whitney, being of lawful age and having been duly sworn, deposes and says that he is a citizen of the State of Pennsylvania, residing in the city of Pittsburgh and the county of Allegheny, and that he is a holder of 50 shares of stock of said company, acquired on 10th day of October, 1891.

That while he is advised, informed, and believes that a fraudulent conspiracy, as set forth in the bill of complaint, was contrived by said directors, and that an attempt is still being made to consummate the same, yet he is unable, because of the refusal of said board of directors to show the books and papers of said company to the said stockholders, to specifically state the manner, method, and amounts of money lost by the said stockholders and your deponent by reason of the fraudulent conduct of said directors, and says that it is necessary that discovery be made by said directors, and that the papers and books of said company be produced for examination by your honors, or such person as your honors may appoint for that purpose, in order that said bill of complaint may be properly heard and decided by your honors.

GEO. I. WHITNEY.

Sworn and subscribed before me this 12th day of April, 1894.

GEO. JOHNSTON,
[SEAL.] *Notary Public.*

40 The Circuit Court of the U. S. for the 6th Circuit, Western District of Michigan, Northern Division.

FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING COMPANY ET AL. } In Equity.

STATE OF NEW YORK,
City and County of New York, } *ss:*

Emanuel Levy, being duly sworn, deposes and says that he is a resident of the city, county, and State of New York, and is a stockholder of the said defendant company, being the holder of 1,100 shares of the capital stock of the said company; that prior to the 1st day of November, 1891, and ever since deponent authorized Felix Jellenik, one of the plaintiffs herein, to represent this deponent in all matters relating to the said defendant company, and duly authorized said Felix Jellenik to examine the books of said defendant company for the purposes of determining the true state and condition of said defendant company.

And further deponent saith not.

EMANUEL LEVY.

Sworn and subscribed before me this 16th day of February, A. D. 1894.

[SEAL] HANFORD S. WEED,
Notary Public, N. Y. Co.

41 In the Circuit Court of the U. S. for the 6th Circuit, Western District of Michigan, Northern Division.

FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING COMPANY ET AL. } In Equity.

CITY AND COUNTY OF NEW YORK, *ss:*

Felix Jellenik, of lawful age, being duly sworn, deposes and says that he is a citizen of the State of New York, residing in the city of New York, and is a stockholder of the said defendant company, being the holder of 600 shares, whereof 100 shares *was* acquired before the making of the assessment of five dollars per share hereinafter mentioned, and of 500 shares of capital stock acquired after the making of the three-dollar assessment hereinafter mentioned. Your deponent further says that, acting in his own behalf and as attorney for Emanual Levy, who is the holder of 1,100 shares of the capital stock of said company, and as attorney for George Shiras, 3d, S. U. Trent, George I. Whitney, and Frank Stephenson, all of whom are parties plaintiff to the bill of complaint filed in this case, he applied to the proper officers of said defendant company on or about the first day of November, 1891, for leave to examine the books of said defendant company for the purpose of determining the true

state and condition of said defendant company, and that said demand to so examine the books was refused; that by reason of said refusal he, acting for himself and as attorneys for said parties, refused and advised the said clients to refuse to pay said three-dollar assessment.

Your deponent further says that while he is advised, informed, and believes that said directors had conspired together, as
42 set forth in said bill of complaint, to defraud the stockholders of said company of their stock and to secure for themselves individually the control of all the mining property and assets of said company, it is impossible to state specifically the manner and time and amounts of money lost to the stockholders by said fraudulent conspiracy, and that discovery is necessary and the production of the books and papers of the defendant company in order to inform your honorable court of the true state of said defendant company and of the manner and means employed by said directors in their said conspiracy.

And further deponent saith not.

FELIX JELLENIK.

Sworn and subscribed before me this 16th day of February, A. D. 1894.

HANFORD S. WEED,
[SEAL.] *Notary Public, N. Y. Co.*

43 FELIX JELLENIK ET AL.
vs.
THE HURON COPPER MINING COMPANY ET AL.

Frank L. Stephenson, being of lawful age and being duly sworn, deposes and says he is a citizen of the State of Pennsylvania, residing in the city of Pittsburgh, and that he is the holder of 50 shares of stock of said company, acquired on the 10th day of October, 1891; that he is one of the parties plaintiff to said bill of complaint, and he is advised, informed, and believes that the statements therein contained are true, but that it is impossible, by reason of the refusal of said directors to exhibit to the stockholders upon demand their books and papers, to state the manner, method, and amount of money lost by the fraudulent conduct of said directors, and that a discovery is necessary in order to a just determination of — said company.

F. L. STEPHENSON.

Sworn and subscribed before me this 12th day of April, 1894.

GEO. JOHNSTON,
[SEAL.] *Notary Public.*

44 In the Circuit Court of the United States, the 6th Circuit Western District of Michigan, Northern Division.

FELIX JELLENIK ET AL.
vs.
HURON COPPER MINING COMPANY. } In Equity.

STATE OF WEST VIRGINIA, }
County of ——, } *ss*:

This day personally appeared before me, a notary public for said State and county, William Seymour Edwards, of lawful age, who made oath as follows, to wit: That upon the ninth (9th) day of February, 1892, he attended the sale of the common stock of the Huron Copper Mining Company, held at the office of said company, No. 19 Congress street, Boston, Massachusetts, at the hour of 12 noon; that at that sale 10 shares of stock of said company, evidenced by certificate No. —, issued upon the 10th day of February, 1892, were bought by him in behalf of C. C. Dickey, trustee, for J. H. Seymour, and also ten shares of said stock were subsequently issued by said company on 10th February, 1892, evidenced by certificate No. —, to William M. Kennedy.

That as attorney for said Dickey, trustee, and said Kennedy, your affiant called at the office of said company aforesaid and made personal request of D. L. Demmon, treasurer and secretary of said company, at about 11 o'clock a. m., upon the tenth day of February, 1892, that he be permitted to examine the stock books, other records and books of said company, as by the laws of Michigan allowed; that said Demmon refused and declined to permit your affiant any such access to any of said books of said company, although the same were convenient and immediately at hand and accessible.

45 That upon the 11th day of February your affiant sent a written request to said Demmon asking him as secretary and treasurer of said company to permit your affiant to come and himself and by his agents to examine said books and accounts of said company, and was again refused any opportunity to examine said books of said company.

Your affiant further states that, with the exception of the aforesaid twenty shares of said stock, all the stock of said company was bought in by J. C. Watson, the president and a director of said company, and by Bacon, a clerk in office of said company and in the immediate employ of said D. L. Demmon, treasurer and secretary of said company.

Your affiant further states that prior to the sale of said stock a notice was publicly read by C. H. Gallagher, in behalf of certain stockholders of said company, notifying the officers, directors of said company, and all purchasers at said sale that the said sale was deemed null and void, and that proceedings were then and at that time pending in the superior court of the State of Massachusetts, where a permanent injunction was sought to prevent and prohibit

said sale, and that further proceedings seeking the appointment of a receiver for said company were about to be instituted in the courts of the State of Michigan, and that all who bought at said sale did so at their peril.

Your affiant further states that said sale was held in the private office of said Demmon; that the sale was conducted in a very hasty and precipitate manner; that the public were not allowed more than six square feet of standing room; that no one was present beside your affiant and three other persons, except the officers of said company and their clerks, and themselves or by their clerks
46 did all the bidding on said stock, excepting what bids were made on the said 20 shares above referred to by your affiant, and the one other bidder, H. C. Sears, who bought the ten shares, part of said 20 shares now owned by said Kennedy, and who acted as agent for your affiant.

Your affiant further states that at the time of said selling of said stock a careful record of the number of shares thereof offered and sold was kept by one of the four persons present and under the eye of your affiant, and that your affiant believes said record to be correct, and that the accurate sum-ation of the number of shares there and then offered and sold, as so noted and recorded, were as follows, to wit:

H. C. Sears, 10 shares (for Wm. M. Kennedy); C. C. Dickey, trustee, 10 shares (for J. H. Seymour); —— Bacon, clerk in said office, 50 shares and 2,675 shares; J. C. Watson, president of said company, 38,315 shares; total, 41,060 in all, being in all 1,060 shares more stock than all the company possessed, the total stock of said company being a total of 40,000 shares.

WILLIAM SEYMOUR EDWARDS.

Taken, sworn to, and subscribed before me, J. H. Nash, a notary public for Kanawha county, West Virginia.

[SEAL.] J. H. NASH, *Notary.*

47 (Endorsed:) 115. Circuit court of U. S. for the western district of Michigan. In equity. Felix Jellenik *et al. vs.* Huron Copper Mining Co. Bill of complaint and affidavits. Filed Dec. 31st, 1894. F. M. Moore, dep. clerk. Clark & Pearl, sol'rs for complainants & of counsel.

48 THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Northern Division, }

The President of the United States of America to Huron Copper Company, J. C. Watson, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Greeting:

We command you and every of you that you appear before our judge of our circuit court of the United States of America for the western district of Michigan, at Marquette, in said district, on the first Monday in the month of March next, to answer the bill of complaint of Felix Jellenik, George Shiras, 3d, C. C. Dickey, trustee,

William M. Kennedy, Lewis McMullen, trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards, this day filed in the clerk's office of said court, in said city of Marquette, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of Michigan to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Marquette aforesaid, this 6th day of February, in the year of our Lord one thousand eight hundred and ninety-five.

Seal of the U. S. Circuit Court.

CHARLES S. FITCH, *Clerk*,
By F. M. MOORE, *Deputy Clerk*.

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Marquette aforesaid, on or before the day to which the within writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

CHARLES S. FITCH, *Clerk*,
By F. M. MOORE, *Deputy Clerk*.

49 Endorsed.

WESTERN DISTRICT OF MICHIGAN, ss:

I do hereby certify and return that on the 15th day of February A. D. 1895, I served the within writ on Johnson Vivian, one of the defendants within named, at Houghton, Michigan, in said district, by delivering a true copy thereof to said defendant, Johnson Vivian, and at the same time showing him this original subpœna, with the seal of the court and the signature of the clerk attached thereto.

And I do further certify that after diligence search and inquiry I have been unable to find any of the remaining defendants named in the within subpœna within the said northern division of the western district of Michigan.

CHARLES R. PRATT,
U. S. Marshal,
By M. D. CRAWFORD,
Deputy U. S. Marshal.

No. 115. Circuit court of the United States, western district of Michigan, northern division. Felix Jellenik *et al.*, complainants, *vs.* Huron Copper Mining Co. *et al.*, defendants. Chancery subpœna, returnable to rule day, first Monday in March, A. D. 1895. Filed March 4th, A. D. 1895. F. M. Moore, dep. clerk. Clark & Pearl, compl'ts' sol'rs.

50 THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Northern Division, }

The President of the United States of America to the Huron Copper Mining Company, J. C. Watson, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Greeting:

We command you and every of you that you appear before our judge of our circuit court of the United States of America for the western district of Michigan, at Marquette, in said district, on the first Monday in the month of March next, to answer the bill of complaint of Felix Jellenik, George Shiras, 3rd, C. C. Dickey, trustee; William M. Kennedy, Lewis McMullen, trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards, this day filed in the clerk's office of said court, in said city of Marquette, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of Michigan to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Marquette aforesaid, this 6th day of February, in the year of our Lord one thousand eight hundred and ninety-five.

Seal of U. S. Circuit Court.

CHARLES S. FITCH, *Clerk.*
By F. M. MOORE, *Deputy Clerk.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Marquette aforesaid, on or before the day to which the within writ is returnable the complainant will be taken against them as confessed and a decree entered accordingly.

CHARLES S. FITCH, *Clerk.*
By F. M. MOORE, *Deputy Clerk.*

51 Endorsed.

WESTERN DISTRICT OF MICHIGAN, ss:

I do hereby certify and return that on the 15th day of February, A. D. 1895, I served the within writ on Johnson Vivian, one of the defendants within named, at Houghton, Michigan, in said district, by delivering a true copy thereof to said defendant, Johnson Vivian, and at the same time showing him this original subpœna, with the seal of the court and the signatures of the clerk attached thereto.

And I do further certify that after diligence search and inquiry I have been unable to find any of the remaining defendants named in the within subpœna within the said northern division of the western district of Michigan.

CHARLES R. PRATT,
U. S. Marshal,
By M. D. CRAWFORD,
Deputy U. S. Marshal.

No. 115. Circuit court of the United States, western district of Michigan, northern division. Felix Jellenik *et al.*, complainants, *vs.* Huron Copper Mining Co. *et al.*, defendants. Chancery subpœna, returnable to rule day, first Monday in March, A. D. 1895. Filed April 19, A. D. 1895. F. M. Moore, dep. clerk. Clark & Pearl, compl'ts' sol'rs.

52 In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, S. U. TRENT, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy

vs.

HURON COPPER MINING COMPANY, J. C. WATSON, SAMUEL L. Smith, D. L. Demmon, and Johnson Vivian.

To the honorable the judges of said court:

Now comes the complainants in the above-entitled cause, by Clark and Pearl, their solicitors, and state that whereas the defendants J. C. Watson, Samuel L. Smith, and D. L. Demmon are not inhabitants of the western district of Michigan, and therefore not within the jurisdiction of the process of subpœna issued from this court, and have not and cannot be served with subpœna from this court on account of such non-residence;

And whereas said defendants have not voluntarily appeared in said cause, the complainants move this honorable court that it make an order directing such defendants, J. C. Watson, Samuel L. Smith, and D. L. Demmon, to appear, plead, answer, or demur to the bill of complaint filed in said cause by a day to be fixed by the order of this court, and that the same be served personally upon said defendants, if they can be found; and if personal service cannot be made upon such defendants, that the same be published in the weekly issue of "The Mining Journal," a paper published in said district, once a week for six successive weeks, and that upon proof of such personal service of such order upon said defendants or upon proof of the publication of such notice in said newspaper, that the appearance of the said J. C. Watson, Samuel L. Smith, and D. L. Demmon may
53 be entered in said court, and their default for not answering, pleading, or demurring to the bill of complaint in said cause may be entered by complainants.

This motion is based upon the affidavit of F. O. Clark, one of the solicitors of the complainants, hereto attached.

CLARK AND PEARL,
Solicitors for Complainants.

54 In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, S. U. TRENT, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy

vs.

HURON COPPER MINING COMPANY, J. C. WATSON, SAMUEL L. Smith, D. L. Demmon, and Johnson Vivian.

MARQUETTE COUNTY, *ss:*

F. O. Clark, being duly sworn, deposes and says that he is one of the solicitors for the complainants in the above-entitled cause; that a subpœna was issued out of the said court in the said cause and returned personally served upon Johnson Vivian, one of the defendants, who resides in the said district, as shown by the return of the deputy U. S. marshal of said district; that it was not served upon the defendants J. C. Watson, Samuel L. Smith, and D. L. Demmon for the reason that they do not reside within said district; that said J. C. Watson and D. L. Demmon are supposed to reside at Boston, Massachusetts, and said Samuel L. Smith is a resident of Detroit, Michigan.

And this deponent further states that the bill filed in said cause, as shown by the said bill on file in said cause, is for the purpose of removing an encumbrance or cloud upon the title of the complainants to stock held by them in the Huron Copper Mining Company, a corporation organized under the laws of Michigan and located in Houghton county, in said State, which encumbrance or cloud upon the title of the complainants to said property was caused by a sale of stock for pretended delinquent assessment against the complainants, which sale was made by order of
55 the board of directors, as the bill alleges, consisting of J. C. Watson, Samuel L. Smith, H. J. Stevens, D. L. Demmon, and Johnson Vivian, defendants in the above-entitled cause (except H. J. Stevens, who is reported deceased), said directors, fraudulently selling 38,315 shares of said stock to said Watson, including the stock of the complainants, and thus creating an encumbrance or cloud upon the title of said complainants to said personal property, as appears by the allegations of the bill filed in said cause; and it also appears from the allegations of said bill that the entire stock of said company is 40,000 shares, and that the said defendants, J. C. Watson, Samuel L. Smith, H. J. Stevens, and D. L. Demmon, as directors of said company, conspiring together to defraud the complainants as stockholders out of their stock, caused a fraudulent sale of the same to be made to said Watson and others, and that said defendants are now claiming to own the said stock and refusing to show the books to the complainants or their agents, though requested so to do; which bill is

also filed, as alleged, for the purpose of procuring a receiver for the said company on account of the frauds of its directors to manage the same, and to enjoin the said defendants from interfering or intermeddling with the property and business of the said defendant company, and that the court decree that the said pretended sale of the stock of the complainants, as set forth in the bill of complaint filed in said cause, was a nullity, and that the stock so held by said Watson and his codirectors and confederates is held in trust for the complainants and the other original stockholders, and that said directors so made defendants render an account of their doings. For more particular reference as to the claims of complainants reference is hereby made to the bill of complaint filed in said cause.

F. O. CLARK.

Subscribed and sworn to before me this 22nd day of July, A. D. 1895.

F. M. MOORE,
Notary Public.

56 (Endorsed:) 115. In the circuit court of U. S. for the sixth circuit, western district, northern division, western dist. of Mich. Felix Jellenik *et al. vs.* Huron Copper M. Co. Order. Enter order pursuant to the within application. H. F. Severens, judge. Filed July 22d, 1895. F. M. Moore, dep. clerk.

57 UNITED STATES OF AMERICA:

Adjourned May Term, A. D. 1895.

MONDAY, *July 22d*, 1895.

Court opened pursuant to adjournment.
Present: Hon. Henry F. Severens, U. S. dist. judge.

FELIX JELLENIK; GEORGE SHIRAS, 3D, S. U. TRENT, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy.

vs.

HURON COPPER — COMPANY, J. C. WATSON, SAMUEL S. SMITH, D. L. Demmon, and Johnson Vivian.

It appearing that Felix Jellenik, George Shiras, 3d, S. U. Trent, C. C. Dickey, Lewis McMullen, trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy have filed a bill of complaint in said court against the Huron Copper Mining Company, J. C. Watson, Samuel S. Smith, D. L. Demmon, and Johnson Vivian, and it appearing that a motion has been filed in said court by the complainants in said cause, accompanied with an affidavit stating in substance the nature of the suit and the names of the defendants upon whom service cannot be made within the district and the place of their supposed residence, and it appearing

by said affidavit that the bill filed in said cause is for the purpose of removing an encumbrance or cloud from the title to personal property within this district wherein the suit was brought, and it appearing that the defendants J. C. Watson, Samuel S. Smith, and D. L. Demmon are non-residents of this district and
58 have not appeared in said cause, it is—

Ordered that said defendants, J. C. Watson, Samuel S. Smith, and D. L. Demmon, appear, plead, answer, or demur to the said bill of complaint filed in said cause within two months from the date of this order, or the appearance of said defendants will be entered.

And it is further ordered that the complainants serve or cause to be served upon the said defendants, Watson, Smith, and Demmon, a copy of this order.

And it is further ordered, if personal service of this order cannot be made upon all of the said defendants, said service may be made by publication once in each week for six successive weeks in the weekly issue of "The Mining Journal," a newspaper published in the city of Marquette, Michigan, and that upon proof filed in said court of either personal service upon said defendants, made not less than fifteen days prior to the expiration of said two months allowed for defendants to appear and plead, answer, or demur, or of publication of this order, as aforesaid, completed not less than ten days prior thereto, at the expiration of the said two months, on failure of the said defendants to appear, answer, plead, or demur, their appearance may be entered by the complainants and their default for not so appearing be entered and the bill filed in said cause may be taken as confessed against them.

59 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. DEMMON, Samuel L. Smith, and Johnson Vivian.

The Huron Copper Mining Company, one of the defendants, impleaded with others in the above entitled cause, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged, for plea to the whole of said bill says:

1. That, as appears in said bill, the defendants named therein, J. C. Watson, D. L. Demmon, S. L. Smith, are necessary and indispensable parties in said suit, in whose absence this court cannot

grant the relief therein prayed, and that said Watson, Demmon, and Smith were not at the time of filing the said bill of complaint, and are not now, inhabitants of this said western district of Michigan (and this appears in said bill), and that no subpœna or process of court of any kind in this cause has been served upon them in said district, nor have they, nor has either of them, voluntarily appeared in this cause and submitted themselves to the jurisdiction of this court.

2. That the stock of the Huron Copper Mining Company, alleged in said bill, belonging to the complainants in this cause, is not, nor is any of it, personal property or property within said district.

Therefore this defendant, The Huron Copper Mining Company, doth plead the said want of parties, and prays the judgment of this court whether it should be compelled to make any further answer to the said bill of complaint, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHADBOURNE & REES,
Sol'rs for said D'f't, H. C. M. Co.

In the above-entitled cause the undersigned counsel for the Huron Copper Mining Company hereby certifies that in his opinion the foregoing plea of said company is well founded in point of law.

THOMAS H. TALBOT, *Of Counsel.*

J. C. Watson, president of the Huron Copper Mining Company, being by me d[illegible]y sworn, says that the foregoing plea of said company is not interposed for delay, and that the matters alleged in said plea are true in point of fact.

JOHN C. WATSON,
President Huron Copper Mining Co.

Subscribed and sworn to before me this 25 day of November, 1895, at Boston, in the State of Massachusetts.

[SEAL.] FRANCIS S. FISKE,
U. S. Commissioner.

(Endorsed:) U. S. circuit court, western dist. of Michigan, N. division. 115. Felix Jellenik *et al. v.* Huron Cop. M'ng Co. *et als.* Plea of H. Cop. M'ng Co. Filed Dec. 2d, 1895. F. M. Moore, dep. clerk. Chadbourne & Rees, sol. of H. C. M'g Co.

60 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, S. U. Trent, C. C. Dickey, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy, Complainants,
v.
HURON COPPER MINING COMPANY, J. C. WATSON, Samuel L. Smith, D. L. Demmon, and Johnson Vivian, Defendants.

Dated November 30th, A. D. 1895.

In this cause, on motion of Frank E. Robson, solicitor for the defendant Samuel L. Smith, it is ordered that the appearance of the said defendant be, and the same is hereby, entered; and, on like motion, it is further ordered that the complainants or their solicitors deliver a copy of the bill of complaint in this cause to the said solicitor of said defendant, Smith, within twenty days after service of notice of this order, and in default thereof that said bill of complaint may be dismissed with costs to this defendant.

F. M. MOORE.
Deputy Clerk.

To Francis M. Moore, deputy clerk of said court.

SIR: Please to enter the foregoing order in the common rule book in the above-entitled cause.

Dated November 30th, A. D. 1895.

FRANK ROBSON,
Solicitor and of Counsel for said Defendant, Samuel L. Smith.

61 (Endorsed:) 115. Circuit court, sixth circuit, west. dist. of Michigan, northern division. In equity. Felix Jellenik *et al. vs.* Huron Copper Mining Co. *et al.* Order for appearance def't S. L. Smith, &c. Frank E. Robson, sol'r def't Smith. Filed Dec. 2d, 1895. F. M. Moore, dep. clerk. Law offices of Frank E. Robson, Detroit, Mich., chamber of commerce.

62 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, S. U. TRENT, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy

vs.

HURON COPPER MINING COMPANY, J. C. WATSON, SAMUEL L. Smith, D. L. Demmon, and Johnson Vivian.

Suit pending in said court on the 22nd day of July, 1895.

Present: The Honorable Henry F. Severens, district judge.

It appearing that Felix Jellenik, George Shiras, 3d, S. U. Trent, C. C. Dickey, Lewis McMullen, trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy have filed a bill of complaint in said court against the Huron Copper Mining Company, J. C. Watson, Samuel L. Smith, D. L. Demmon, and Johnson Vivian, and it appearing that a motion has been filed in said court by the solicitors for the complainants in said cause, accompanied with an affidavit stating in substance the nature of the suit and the names of the defendants upon whom service cannot be made within the district and the place of their supposed residence, and it appearing *that* said affidavit that the bill filed in said cause is for the purpose of removing an encumbrance or cloud from the title to personal property within this district, wherein the suit was brought, and it appearing that the defendants J. C. Watson, Samuel L. Smith, and D. L. Demmon are non-residents of this district and have not appeared in said cause,

It is ordered that said defendants, J. C. Watson, Samuel L. Smith, and D. L. Demmon, appear, plead, answer, or demur to the said bill of complaint filed in said cause within two months from the date of this order or the appearance of said defendant will be entered.

63 And it is further ordered that the complainants serve or cause to be served upon the said defendants, Watson, Smith, and Demmon, a copy of this order.

And it is further ordered, if personal service of this order cannot be made upon all of the said defendants, said service may be made by publication once in each week for six successive weeks in the weekly issue of the Mining Journal, a newspaper published in the city of Marquette, Michigan, and that upon proof filed in said court of either personal service upon said defendants, made not less than fifteen days prior to the expiration of said two months allowed for defendants to appear and plead, answer, or demur, or of publication of this order, as aforesaid, completed not less than ten days prior thereto, at the expiration of the said two months, on the failure of the said defendants to appear, answer, plead, or demur, their appear-

ance may be entered by the complainants and their default for not so appearing be entered, and the bill filed in said cause may be taken as confessed against them.

I do hereby certify that the foregoing is a true copy of an order made by the circuit court of the United States for the sixth circuit, western district of Michigan, northern division, in equity, on the 22nd day of July, 1895, in the above-entitled cause.

FRANCIS M. MOORE,
Deputy Clerk.

Attached to said order was the following proof of publication:

Proof of Publication: Publisher's Affidavit.

STATE OF MICHIGAN, } ss:
County of Marquette, }

T. Johns, being duly sworn, deposes and says that he is foreman of the Mining Journal, a newspaper printed and published in the city and county of Marquette, State of Michigan; that the annexed printed notice has been duly published in said newspaper at least once in each week for seven successive weeks immediately preceding the day of service mentioned in said notice, and that the first insertion thereof was on the twenty-seventh day of July, A. D. 1895, and the last insertion on the seventh day of September, 1895.

T. JOHNS.

Subscribed and sworn to before me this 9th day of September, A. D. 1895.

ALBERT HORNSTEIN,
[NOTARIAL SEAL.] *Notary Public, Marquette County, Mich.*

(Endorsed:) Filed May 12, 1896. F. M. Moore, dep'y clerk.

64 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHARAS, 3D, C. C. DICKEY, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards
vs.
THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. Demmon, Samuel L. Smith, and Johnson Vivian.

It is hereby stipulated by and between the solicitors for the complainants and Chadbourne and Rees, solicitors for The Huron Copper Mining Company, one of the defendants, that the issue formed between the complainants and the defendant The Huron Copper Mining Company by special plea as to the jurisdiction of the court, etc., shall stand for argument in the said court at the

opening of adjourned term of said court at Marquette, Michigan, in July next.

CLARK AND PEARL,
Sol'rs for Compl'ts.
CHADBOURNE & REES,
Sol'rs for Def't The Huron Copper Mining Company.

Endorsed on back: Filed June 25, 1896. F. M. Moore, dep. clerk.

65 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, S. U. TRENT, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Emanuel Levy

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, S. L. SMITH, D. L. Demmon, and Johnson Vivian.

It is hereby stipulated and agreed by and between the complainants, by Clark & Pearl, their solicitors, and the defendant The Huron Copper Mining Company, by Chadbourne & Rees, its solicitors, that the plea to the jurisdiction of the court filed by said company defendant shall be and is set down for argument for the first day of next September term of said court, or as soon thereafter as counsel can be heard thereon, and that should the September term not be held, the argument on said plea may be brought on in the city of Grand Rapids before Hon. Henry F. Severens, district judge, on ten days' notice by either party to the other.

July 10th, 1896.

CLARK & PEARL,
Sol'rs for Compl'ts.
CHADBOURNE & REES,
Sol's for H. C. Min'g Co.

(Endorsed:) 115. U. S. circuit court for the western dist. of Michigan, northern division. In equity. Felix Jellenik *et al. vs.* The Huron Copper Mining Co. *et al.* Stipulation. Filed July 14, 1896. F. M. Moore, dep. clerk.

66 At an adjourned session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, begun and held at the United States court-rooms, in the city of Marquette and in said district and division, on Tuesday, the fourteenth day of July, in the year of our Lord one thou-

sand eight hundred and ninety-six, and of the year of Independence the one hundred twenty-first.

Present: Hon. Henry F. Severens, U. S. district judge.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. DICKEY, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards, Complainants,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Defendants.

} In Equity.

On filing written stipulation of counsel, it is ordered that the plea to the jurisdiction to the court filed by the said company defendant shall be and is set down for argument for the first day of the next September term of said court, or as soon thereafter as counsel can be heard thereon, and that should September term not be held the argument on said plea may be brought on in the city of Grand Rapids, before the Honorable Henry F. Severens, on ten days' notice given by either party to the other.

67 UNITED STATES OF AMERICA:

September Term, A. D. 1896.

WEDNESDAY, *September 2d*, 1896.

Court met pursuant to adjournment.

Present: Hon. Henry F. Severens, U. S. district judge.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. DICKEY, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards, Complainants,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Defendants.

This cause came on to be heard on plea in abatement to the jurisdiction filed by the defendant company, Clark & Pearl appearing for complainants and Chadbourne and Rees and Thomas H. Talbot, of counsel for the defendant company. Cause was orally argued and submitted, the court allowing defendant company fifteen days in which to prepare for the court and serve upon complainants' counsel a printed brief of argument on said issue, and complainants' counsel ten days after receiving copy of defendant company's brief in which to present to the judge their brief.

68 UNITED STATES OF AMERICA:

September Term, A. D. 1897.

TUESDAY, *September 14th*, 1897.

Court met pursuant to adjournment.

Present: Hon. Henry H. Swan, U. S. district judge, eastern district of Michigan, sitting by designation.

FELIX JELLENIK, GEORGE SHIRAS, 3D, S. U. TRENT, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, William S. Edwards, and Samuel Levy

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, SAMUEL L. Smith, D. L. Demmon, and Johnson Vivian.

This cause coming on before the court to be heard upon the bill of complaint and the plea in bar of the Huron Copper Mining Company, alleging that this court has no jurisdiction to further proceed upon said bill of complaint for want of service of the process of the court upon and for want of appearance of indispensable parties, to wit, J. C. Watson, D. L. Demmon, and Samuel L. Smith, and the matter of said plea being duly considered by the court, after hearing counsel in support of and against said plea, it is hereby ordered, adjudged, and decreed, it being the opinion of the court that the court is without jurisdiction to proceed with said cause for the reason above cited, that said plea be, and the same is hereby, sustained, and said bill of complaint be dismissed with costs, to be taxed in favor of the said defendant, The Huron Copper Mining Company, but without prejudice to the bringing of such further suit by the complainants in the premises as they may be advised.

69 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

FELIX JELLENIK ET ALS.

vs.

THE HURON COPPER MINING COMPANY ET ALS.

This case was argued and submitted some time ago. The question of jurisdiction is one upon which I have had much doubt and difficulty. Certain of the defendants are alleged to hold the legal title to certain stock in a Michigan corporation, and these defendants are non-residents of the State. The complainants allege that by reason of certain facts alleged in the bill those defendants have acquired the legal title in fraud of their rights; that they are equitable owners of this stock, and pray for a decree establishing their rightful title and ownership of the stock. The defendants referred to are necessary parties to the controversy, and the court cannot proceed to an effective decree without their presence. An order for

a publication of notice to them, under the provisions of the statute in that behalf, was made and duly published, but they refused to appear in the case, and the question is whether the court has lawful authority to proceed further.

The decisive question which concerns the jurisdiction is, Whether the stock—which upon general principles, as well as by express provision of the Michigan statute, is personal property—has its situs, for the purpose of determining the question in hand, within the district in which the suit is brought? It is stated in the text books that stock in a corporation has its situs in the State under whose laws it is organized; but closer examination of the subject leads me to the conclusion that this is only so to the extent and for the purpose of authorizing legislation within the State upon the theory of its local existence there, and that it does not have so complete an effect as to localize it for all purposes.

70 It has been held by the Federal courts in a number of decisions, which this court must respect, that the right of a shareholder is in the nature of a chose in action—that it is personal property and follows the person of the owner. The language of the courts in general is not altogether harmonious in respect of the character of the peculiar title and right which a shareholder has. It appears to me that the above-stated doctrine of the Federal courts is in the clearest analogy to the general doctrine that the situs or locality of personal property is that of the person holding the legal title to it. The result of such a view must be that the shares of stock in question are not personal property within the district, within the purview of the statute of the United States authorizing the bringing in by publication of notice of non-resident defendants who assert some right or claim to the property which is the subject of suit. If these views are sound, the proper forum for the litigation of the questions here involved would be in the State of which the defendants are citizens, and might be in the Federal courts exercising jurisdiction there if, as the bill states, the complainants are citizens of still other States.

Although it may well be admitted that inasmuch as the corporation itself is a citizen of the State of Michigan, and that to obtain full relief the corporation should be a party to the suit, to the end that the proper entries evidencing the title of the complainants to the stock may be made in its books, this consideration does not appear to me to be controlling. It may be that two successive suits may be necessary to fully accomplish the rights which the complainants claim, but the jurisdiction of the court is established by law, and it cannot transcend its limits upon the suggestion of expediency merely.

The statute of Michigan declares shares of stock in such cor-
71 porations as the Huron Copper Mining Company to be personal property, but it goes no further than to make this bald declaration, and in truth this is no more than declaratory of the general doctrine. There is not, as it seems to me, any sufficient ground for holding that this statutory declaration displaces the rule that personal property follows the domicile of the owner. The probability

is that the Michigan statute was not intended to do more than to make firm the ground upon which, for special purposes, such as taxation and the levy of execution, shares of stock might be deemed to be present within the State and so subject to local control and disposition.

These considerations compel me to hold that, as the means for obtaining jurisdiction over the persons of the individual defendants, non-residents of the State, have been exhausted without avail, the court is powerless to afford any effective aid to the complainants and should dismiss the suit.

Let an order be entered dismissing the bill for want of jurisdiction.

(Signed) H. F. SEVERENS,
U. S. District Judge.

(Endorsed:) No. 115. Circuit court of the United States for the western district of Michigan, northern division. Felix Jellenik *et als. vs.* The Huron Copper Mining Co. *et als.* Opinion of the court. Filed Sept. 14th, 1897. F. M. Moore, dep. clerk.

72 *Citation.*

UNITED STATES OF AMERICA:

To the Huron Copper Mining Company, J. C. Watson, D. L. Demmon, Samuel L. Smith, and Johnson Vivian:

You are hereby notified that in a certain cause, in equity, in the United States circuit court for the sixth circuit and western district of Michigan, northern division, wherein Felix Jellenik, George Shiras, 3d, C. C. Dickey, trustee; William M. Kennedy, Lewis McMullen, trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards are complainants and the above-named parties are defendants, the complainants therein have prayed an appeal to the United States Supreme Court from the decree in said cause entered on the 14th day of September, 1897, and that such appeal has been allowed. Wherefore you are hereby cited and admonished to be and appear at the session of the Supreme Court of the United States, to be holden at the city of Washington, D. C., twenty (20) days from and after the date of this citation, to show cause, if any there be, why the decree appealed from should not be reversed and set aside and relief be granted to appellants, as by them prayed and as to justice and equity may appertain.

Witness the Honorable H. F. Severens, a judge of the district court of the United States for the western district of Michigan, sitting in the circuit, this 8th day of March, eighteen hundred and ninety-eight.

H. F. SEVERENS,
U. S. Dist. Judge.

73 *Assignment of Errors.*

In the Circuit Court of the United States for the Western District of Michigan, Northern Division, Sitting in Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George L. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, William S. Edwards, Complainants,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Defendants.

The complainants, by Clark and Pearl, their solicitors, allege that the court erred in entering a decree in favor of the defendants in the above-entitled cause and in stating reasons for entering such decree substantially as follows:

1st. "The question of jurisdiction is one upon which I have had much doubt and difficulty. * * * The decisive question, which concerns the jurisdiction, is whether the stock, which upon general principles, as well as by express provision of the Michigan statute, is personal property, has its situs, for the purpose of determining the question in hand, within the district in which the suit is brought."

2nd. "It is stated in the text books that stock in a corporation has its situs in the State under whose laws it is organized; but closer examination of the subject leads me to the conclusion that this is only so to the extent and for the purpose of authorizing legislation within the State upon the theory of its local existence there, and that it does not have so complete an effect as to localize it for all purposes."

3d. "It appears to me that the above-stated doctrine of the Federal courts is in the clearest analogy to the general doctrine that
74 the situs or locality of personal property is that of the person holding the legal title to it."

4th. "The result of such a view must be that the shares of stock in question are not personal property within the district, within the purview of the statutes of the United States authorizing the bringing in by publication of notice of non-resident defendants who assert some right or claim to the property which is the subject of suit."

5th. "If these views are sound, the proper forum for the litigation of the questions here involved would be in the State of which the defendants are citizens, and might be in the Federal courts exercising jurisdiction there."

6th. "There is not, as it seems to me, any sufficient ground for holding that this statutory declaration displaces the rule that personal property follows the domicile of the owner."

7th. "The probability is that the Michigan statute was not intended to do more than to make firm the ground upon which, for special purposes, such as taxation and the levy of execution, shares of stock might be deemed to be present within the State, and so subjected to local control and disposition."

8th. "These considerations compel me to hold that, as the means for obtaining jurisdiction over the person of the individual defendants non-residents of the State *they* have been exhausted without avail, the court is powerless to afford any effective aid to the complainants and should dismiss the suit."

9th. "Let an order be entered dismissing the bill for want of jurisdiction."

We respectfully submit that the above conclusions are erroneous, and that the decree should be set aside and a decree entered in favor of the complainants as prayed in their bill of complaint.

CLARK & PEARL,
Solicitors for Complainants.

[Endorsed:] Assignment of errors.

75 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division, Sitting in Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3RD, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, William S. Edwards, Complainants,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Defendants.

STATE OF MICHIGAN, } ss:
County of Houghton, }

Richard F. Looney, being duly sworn, deposes and says that upon the 14th day of March, A. D. 1898, he served a true copy of the annexed citation and assignments of error upon Messrs. Chadbourne & Rees, the solicitors for the said defendant, The Huron Copper Mining Company, by handing the same to Thomas L. Chadbourne, one of the members of said firm of Chadbourne & Rees, in the village of Houghton, Michigan; and further this deponent saith not.

RICHARD F. LOONEY.

Subscribed and sworn to before me this 14th day of March, A. D. 1898.

JAMES D. LOONEY,
[NOTARIAL SEAL.] *Notary Public in and for said County.*

(Endorsed:) No. 115. The circuit court of the United States for the western district of Michigan, northern division. Felix Jellenik *et al. vs.* The Huron Copper Mining Co. *et al.* Proof of service of citation and assignments of error. Filed Mar. 16, 1898. F. M. Moore, dep. clerk. Clark & Pearl, sol'rs for appellants. Business address, Marquette, Mich.

[Endorsed:] Proof of service.

76 In the Circuit Court of the United States for the Western District of Michigan, Northern Division, Sitting in Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. Dickey, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, William S. Edwards, Complainants, vs. THE HURON COPPER MINING COMPANY, J. C. Watson, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Defendants.	September Term, 1897.

To the judges of the circuit court of the United States for the sixth circuit, western district of Michigan, northern division:

Your petitioners, the complainants in the above-entitled cause, would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court for the sixth circuit and western district of Michigan, northern division, in equity, there was entered, at the September term, 1897, of said court, a final decree, greatly to the prejudice and injury of your petitioners; which said decree was erroneous and inequitable in many particulars. Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners pray that they may be allowed an appeal in said cause by the judges of said court to the Supreme Court of the United States, and that the proper order touching the security required of them may be made.

CLARK & PEARL,
Sol'rs for Comp'ts.

77 The appeal prayed for in the foregoing petition is hereby allowed, with citation to issue; appeal bond to be given by one or more of the appellants for costs in the penal sum of five hundred dollars, and not as a supersedeas bond, with sufficient sureties; and I certify that the only question involved in the determination of this case was the jurisdiction of the court.

Dated March 1, 1898.

H. F. SEVERENS,
Presiding Judge of the Circuit Court of the United States for the Western District of Michigan.

78 In the Circuit Court of the United States for the Western District of Michigan, Northern Division, Sitting in Equity.

FELIX JELLENIK, GEORGE SHIRAS, 3D, C. C. DICKEY, Trustee; William M. Kennedy, Lewis McMullen, Trustee; George I. Whitney, Frank Stephenson, Emanuel Levy, S. U. Trent, and William S. Edwards, Complainants,

vs.

THE HURON COPPER MINING COMPANY, J. C. WATSON, D. L. Demmon, Samuel L. Smith, and Johnson Vivian, Defendants.

Know all men by these presents that we, George Shiras, 3d, one of the complainants, and Peter White and F. O. Clark, as sureties, are held and firmly bound unto the above-named defendants in the sum of five hundred dollars ($500), to be paid to the said defendants, their executors or administrators; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 5th day of March, one thousand eight hundred and ninety-eight.

Whereas the above-named complainants have prosecuted an appeal in the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, in equity, to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, in equity:

Now, therefore, the condition of this obligation is such that if the above-named complainants shall prosecute their said appeal to effect and answer all costs if they shall fail to make good their bill of complaint in said cause, then this obligation shall be void;

79 otherwise to remain in full force and virtue.

GEORGE SHIRAS, 3D. [SEAL.]
PETER WHITE. [SEAL.]
F. O. CLARK. [SEAL.]

Sealed and delivered in presence of—
THOS. BOYD, JR.,
As to George Shiras, 3d.
B. O. PEARL,
Witness as to signature of Peter White & F. O. Clark.

UNITED STATES OF AMERICA,
Western District of Michigan, Northern Division, } ss:

Peter White and F. O. Clark, being duly sworn, deposes and says that they are worth the sum of one thousand dollars over and above their just debts and liabilities.

PETER WHITE.
F. O. CLARK.

Sworn to before me this 5th day of March, 1898.

B. O. PEARL,

[SEAL.] *Notary Public in and for the County of Marquette and State of Michigan.*

I approve of the above bond as to form, amount, and sufficiency of the sureties thereto.

March 8, 1898.

H. F. SEVERENS,
U. S. Dist. Judge.

(Endorsed:) 115. In the circuit court of the United States for the western district of Michigan, northern division, sitting in equity. Felix Jellenik, Geo. Shiras, 3d, *et al.*, comp'ts, *vs.* The Huron Copper Mining Co. *et al.*, de'fts. Bond. Filed Mar. 12, 1898. F. M. Moore, dep. clerk.

80 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Northern Division, }

I, Francis M. Moore, deputy clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, do hereby certify the annexed and foregoing to be true and correct copies of all the original files and all journal entries and all papers and other documents in the cause therein entitled; that I have compared the same with the original files and records now remaining in my office; that they are true and correct copies thereof and of the whole thereof.

Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.

In witness whereof I have hereunto set my hand and affixed the official seal of said court, at the city of Marquette, in said district and division, this twenty-eighth day of March, A. D. one thousand eight hundred and ninety-eight.

FRANCIS M. MOORE,
Deputy Clerk.

Endorsed on cover: Case No. 16,924. W. Michigan C. C. U. S. Term No., 339. Felix Jellenik, George Shiras, 3rd, C. C. Dickey, trustee, *et al.*, appellants, *vs.* The Huron Copper Mining Co., J. C. Watson, *et al.* Filed June 29th, 1898.

No. 100.

943
S. C.

Brief of Clark for Appts.

SUPREME COURT

Filed Oct. 9, 1899.

OF THE UNITED STATES.

Office Supreme Court U. S.
FILED
OCT 9 1899
JAMES H. McKENNEY,
Clerk.

FELIX JELLENIK, GEORGE SHIRAS, 3d, C. C. DICKEY, TRUSTEE, ET AL., *Appellants*,
v.
THE HURON COPPER MINING COMPANY, J. C. WATSON, ET AL., *Defendants*.

100

BRIEF OF F. O. CLARK,

Solicitor and of Counsel for Complainants.

MARQUETTE:
MINING JOURNAL CO. (LIMITED), PRINTERS.
1899.

SUPREME COURT.

OF THE

UNITED STATES

FELIX JELLENIK, GEORGE SHIRAS, 3d, C C. DICKEY, TRUSTEE, ET AL.,
Appellants
v.
THE HURON COPPER MINING COMPANY, J. C. WATSON, ET AL.
Defendants.

Brief in Case Number 16,924.

Brief for Complainant and Appellant.

STATEMENT OF FACTS.

The inquiry presented by the Record is, did the court below acquire jurisdiction of the non-resident defendants by publication?

The facts are briefly stated by Judge Severens, before whom the case was tried, as follows:

"Certain of the defendants are alleged to hold the "legal title to certain stock in a Michigan corporation "and these defendants are non-residents of the state. "The complainants allege that by reason of certain "transactions alleged in the bill, these defendants "have acquired the legal title, in fraud of their rights; "that they are equitable owners of this stock; and "pray for a decree establishing their rightful title and

"ownership of it. The defendants referred to are nec "cessary parties to the controversy, and the court can "not proceed to an effective decree without their pres- "ence. An order for publication of notice to them "under the provisions of the statute in that behalf, "was made and duly published, but they refused to "appear in the case; and the question is whether the "court has lawful authority to proceed further."

Jellenik v. The Huron Copper M. Co., 82 Fed. Rep. page 778.

Judge Severns, after holding the case under advisement for a considerable time, decided that the court did not acquire jurisdiction of the defendants who were sought to be brought in by publication; deciding that the stock in the defendant corporation held by said defendants was not personal property, that had its *situs* within the Western District of Michigan. At the same time the learned district judge, expressed much doubt as to the accuracy of the holding, in the following language: "This case was argued and submitted "some time ago. The question of jurisdiction is one "upon which I have had much doubt and difficulty", (see decision 82 Fed. Rep. page 778).

The learned judge finally, without quoting any authorities held that, "The decisive question which "concerns the jurisdiction is whether the *stock*—which "upon general principles, as well as by express pro- "vision of the Michigan statute, is *personal property*— "has its *situs* for the purpose of determining the ques- "tion in hand within the district in which the suit is "brought. It is stated in the text books, that stock in "a corporation has its *situs* in the state under whose "law it is organized; but closer examination of the "subject leads me to the conclusion, that this is only "so to the extent and for the purpose of authorizing

"legislation within the state; upon the theory of its "local existence there; and that the rule does not have "so complete an effect, as to localize it for all purposes. It "has been held by the Federal courts, in a number of "decisions which this court must respect, that the right "of a shareholder is in the nature of a *chose in action* "—that it is personal property, and follows the person "of the owner. The language of the courts in general "is not altogether harmonious in respect to the char- "acter of the peculiar title and right which a share- "holder has. It appears to me that the above stated "doctrine of the Federal courts, is in the clearest "analogy to the general doctrine; that the *situs* or lo- "cality of personal property, is that of the person hold- "ing the legal title to it. The result of such a view "must be, that the shares of stock in question are *not* "*personal property within the district*, within the pur- "view of the Statutes of the United States, authoriz- "ing the bringing in by publication of notice on non- "resident defendants who assert some right or claim "to the property, which is the subject of suit. If these "views are sound, the proper forum for the litigation "of the question here involved would be in the state "of which defendants are citizens; and might be in "the Federal courts exercising jurisdiction there; if as "the bill states the complainants are citizens of still "other states. *Although it may well be admitted, that* "*in as much as the corporation itself is a citizen of the* "*state of Michigan, and that to obtain full relief the* "*corporation should be a party to the suit, to the end that* "*the proper entries evidencing the title to the complain-* "*ants* to the stock may be made in its books, this con- "sideration does not appear to me to be controlling. *It* "*may be that two successive suits may be necessary to* "*fully accomplish the rights which the complainants*

"*claim;* but the jurisdiction of the court is established "by law and it cannot transcend its limits upon the "suggestion of expediency merely."

We claim that the *situs* of the stock of The Huron Copper Mining Company is fixed by the statutes of Michigan, that authorize the organizing of this mining corporation; and that the provisions of the statute limit and control rights acquired under it, viz: the organization of the corporation; the issuing of stock; its sale and transfer; and where its *situs* shall be and its place of transfer; and that the power existed in the state to limit and control the rights which it should confer; and that every person purchasing the stock thus issued, is charged with knowledge of such limitation and controlled by it. The necessity for such a provision is apparent from the statement of the learned district judge, when he says, "Although it may well "be admitted, that in as much as the corporation itself "is a citizen of the state of Michigan, and that to ob- "tain full relief the corporation should be a party to "the suit, to the end that the proper entries, evidenc- "ing the title of the complainants to the stock may be "made in its books, this consideration does not ap- "pear to me to be controlling. *It may be that two suc- "cessive suits, may be necessary to fully accomplish the "rights which the complainants claim;* but the juris- "diction of the court is established by law, and it can- "not transcend its limits upon the suggestion of ex- "pediency merely."

Certainly the state of Michigan, in authorizing the incorporation of a mining company and the issuing of stock, had the power to fix the *situs* of such stock; to place such limitations upon the corporate rights granted, not inconsistent with the provisions of the constitution of the state and of the United States,

such limitations as would prevent multiplicity of suits in different states, in enforcing and protecting legal and equitable rights acquired under or incident to said corporation.

The complainants are stockholders in The Huron Copper Mining Company, a company organized under the general mining law of Michigan, located in Houghton county, in the upper peninsula of Michigan, with its main office located there. The defendants are the company itself and the board of directors. Personal service has been had upon the defendant Co. and upon the defendant Vivian; and defendant Smith has appeared in the case (see p. 35 of Record) but Vivian and Smith have as yet filed no plea, demurrer or answer; for the reason that a stipulation exists allowing their counsel to plead, demur or answer, after the disposition of the plea of the defendant company to the jurisdiction of the court, presented by this record.

Defendants Demmon and Watson, who reside in Boston, Mass., have not appeared; but the defendant Watson, as President of The Huron Company, signed the affidavit attached to the plea to the jurisdiction, filed in the cause for the defendant company. Watson is the president and Demmon the secretary and treasurer of the company.

The bill alleges fraudulent collusion on the part of Watson and Demmon, acting as the officer of the company, whereby the stock of complainants was illegally assessed and sold for a pretended assessment upon the stock on said illegal assessment; thereby creating a *lien and cloud* upon the title of complainants thereto. The prayer of the bill under paragraph eighteen is that the defendants be restrained from any further transferring the stock upon the books of the company; that the court decree that the said pretended sale was a

nullity and passed no title, and that the *lien and cloud* upon the title of the said *stock be removed.*

The special plea, which appears upon pages 33 and 34 of the Record, alleges that the defendants Watson, Demmon and Smith are necessary and indispensable parties; and that they have not appeared and have not been brought into court. As to defendant Smith, he has appeared (see p. 35 of Record).

The order of the court requiring non-resident defendants to appear will be found upon pages 32 and 33 of the Record. A copy of the same order, with proof of due publication, appears upon pages 36 and 37 of the Record.

By stipulation of counsel for complainants and for the defendant The Huron Copper Mining Company; the issue presented by the special plea was heard in September, 1896 (see pp. 37 and 38 of Record).

ARGUMENT.

II.

The issue presented by the plea is, whether or not the order of the court requiring the entry of appearance of the absent defendants Demmon, Watson and Smith, made under the act of congress of March 3, 1875, 18 Statute at Large, page 470, would reach the defendants Demmon and Watson, who reside in Boston. It will be noticed that the practice act of 1887 as amended by the Act of August 30, 1888, 25 Statute at Large, 433, preserves the section of the statute of

March 3, 1875, above referred to; which is section 8, chapter 137, pages 83 and 84 of the Supplement to the Revised Statutes of the United States, Volume 1, from 1874 to 1891.

We insist that the court had the power by order to bring in non-resident defendants residing out of the state, under the circumstances alleged in the bill of complaint. The provision of the statute is as follows:

"In all suits to enforce a lien upon or claim to or *to "remove any encumbrance, lien or cloud upon the title to "real or personal property within the district wherein "the suit is brought*, if one or more of the defendants "shall not be an inhabitant of or found within the dis- "trict, service may be made by procuring from the "court an order directing such defendant to appear, "plead, answer or demur, by a day to be fixed in the "order", etc.

It will be noticed that the bill was filed to *remove the encumbrance and cloud* placed upon the title of complainants by the fraudulent action of defendants acting as the directors of the defendant company as alleged; and it is claimed by the complainants that the *stock* upon which this encumbrance and cloud has thus been placed is personal property "within the district where the suit is brought"; and the contention on the part of the defendants under the plea is that it is not personal property *within the district* where the suit is brought. This then is the issue, *is the situs of the stock in question in this Michigan corporation within the western district of Michigan, where the corporation is organized under the laws of Michigan, and located?*

Justice Miller in the case of Smith v. Lyons, 133 U.S. 315, explains very fully the various amendments to the jurisdictional statute of March 3d, 1875; and points out that said act was to supersede section 738 of

the Revised Statutes; and that the Act of March 3, 1875, as well as said section 738, provided for the making of an order by the judge that would bring in a non-resident defendant in such a case there stated; but section 738 did not provide for the bringing in of a non-resident defendant where it was sought *to remove an encumbrance, lien or cloud from real or personal property within the district*, as the statute of 1875 does provide for as appears in section 8 of chapter 137, pages 84 and 85 of the supplement to the Revised Statutes of the United States for the years 1874 to 1891.

Volume 1, Gould & Tucker's notes on the Revised Statutes of the United States, pages 210, 212, discuss the meaning and intent of section 8 of 18 Statutes at Large referred to in the following language:

"Section 8 of Statute of March 3, 1875, Chapter 137, "18 Statutes, 470, was expressly saved from repeal by "Section 5 of the Statutes of 1887, page 127, and was "intended as a substitute for Section 738 of the Re"vised statutes. The *sole* purpose of the statute was "to furnish a means of obtaining jurisdiction of the "person of the defendant not found within the dis"trict, in actions where the court under the constitu"tion and existing statutes would have jurisdiction, if "all the defendants were personally served with pro"cess within the district, or voluntarily appeared."

"The intention of Section 738 of the Revised Stat"utes of 1878 independent of the act of 1875, was only "to reach those suits in equity, in which it was brought "to enforce some pre-existing claim, legal or equitable, "upon or to specific property, real or personal, and in "cases in which it is sought to reach and appropriate "the general payment of a defendant to the payment "of his debts by the words "legal or equitable" lien or "claim against real or personal property. Congress in-

"tended to reach every case in which there was a "charge upon specific property capable of enforcement "by a court of equity. Section 8 of the Act of 1875 "made this clear."

Volume 1 of Gould & Tucker's Notes, page 211.

"This Section 8 dispenses with the requirement of "personal service as well in the case of infants as "other defendants."

Insurance Co. v. Bangs, 103 U. S. 435.
Amohr v. Maniere, 101 U. S. 402.
Woodbridge v. McKenney, 8 Fed. Rep. 670.

"The decree under this section affects *indispensable* "*parties* who are parties to the bill to the extent of "their property within such district, although they do "not appear. This constructive service applies only to "such defendants as are citizens of different states, and "it therefore does not apply to inhabitants of terri- "tories or of the District of Columbia."

Hosford v. Gudger, 35 Fed. Rep. 392.
Ellis v. Raymond, 35 Fed. Rep. 394.

In the case of United States v. American Lumber Company, 80 Fed. Rep. 310, referring to the United States Statute authorizing jurisdiction over non-resident defendants by special order of court, District Judge Morrow of California holds as follows: "The defendants "being confessedly non-residents, the proper and in "fact the *only* legal way provided for by the laws of "the United States in which they could be served "with process, and thereby effectually made parties to "the suit brought against them in this district was by "obtaining the special order of service, sometimes "termed the 'warning order' required by Section 8 of "the Act of March 3, 1875 (18 Statute 472, Revised "Statutes, Sec. 738), the material parts of this section "in the act are as follows: That when any suit com-

"menced in any circuit court of the United States "to enforce any legal or equitable lien upon or a claim "to or *to remove any encumbrance or lien or cloud upon "the title to real or personal property within the district* "where such suit is brought one, or more of the defend- "ants therein shall not be an inhabitant of, or found "within the said district or shall not voluntarily ap- "pear thereto, it shall be lawful for the court to make "an order directing such absent defendant or defend- "ants to appear, plead, answer or demur by a day cer- "tain to be designated; which order shall be served on "such absent defendant or defendants, if practicable, "wherever found * * or, where such personal ser- "vice upon such absent defendant or defendants is not "practicable, such order shall be published in such "manner as the court may direct, not less than once a "week for six successive weeks. And in case such ab- "sent defendant shall not appear, plead, answer or de- "mur within the time so limited * and upon proof "of the service of publication of said order * it shall "be lawful for the court to enter jurisdiction and to "proceed to the hearing and adjudication of such "suit," etc.

In the court below it was insisted that the statute of 1875 *did not confer jurisdiction in a case like the one at bar*, because the complainants *resided in Pennsylvania*, and the *defendants* who had not appeared resided in *Boston, Mass.;* and that *neither* the complainants or the defendants sought to be brought in resided in the state of Michigan, and that the statute *did not apply* to such a case.

This objection has been disposed of in this court by the opinion delivered by Justice White in Dick v. Foraker, 155 U. S. page 404.

Justice White states the facts as follows: "The ap-

"pellee, and citizen of the state of *Ohio*, brought his "complaint in the circuit court of the United States "for the eastern district of *Arkansas* against the appel- "lant, a citizen of the state of *Illinois*. The bill "sought to *remove a cloud* from a title held by com- "plainant and charged in substance that under an act "of the legislature of Arkansas, approved March 12, 1881, a decree was rendered in the Ashley county cir- "cuit court *directing* the sale of certain lands for the "purpose of realizing taxes due upon them," etc.

Thus, it appears that a citizen of *Ohio*, filed a bill in the United States court in *Arkansas* against a citizen of *Illinois*—just the situation here. In delivering the opinion of the court, Justice White, on page 411, uses the following language:

"The suit was one to *remove a cloud* from the title "to real estate, situated in the district where the suit "was brought."

The defendant was a citizen of another state. The case was obviously within the jurisdiction of the court.

U. S. Revised Statutes, 738.
Act of 1875 (18 Statutes at L. 470, Sec. 8).
Act of 1888 (25 Statutes at L. 433, Sec. 5).
Mellen v. Moline Malleable Iron Works, 131 U. S. 352 (33-178).
Arndt v. Griggs, 134 U. S. 316.
Greely v. Lowe, 155 U. S. 69.

"The contention is, that the law-giving jurisdiction "as against a person not a citizen of the district, where "suit is brought to remove a cloud from the title to "real estate situated therein, applies *only* to cases "where there are two or more defendants, at least one "of whom must be found in the district where the suit "is brought, that the jurisdiction exists to entertain a "suit like the one before us, where there are two or

"more defendants, but not where there is only one. It "was admitted that this contention is unsound, as ap- "plied to Revised Statutes, 1878, but it is insisted that "the point is well taken in consequence of a change, "resulting from the enactment of Revised Statutes, "Sec. 738, to be found in Section 8 of the Act of 1875. "The Revised Statutes give the right to bring such a "suit where any defendant resided out of the district. "The act of 1875 gives the right where one or more "may so reside. *We see no force in this argument, "which in effect* eliminates the word 'one' from the "statute and replaces it by the word 'two', thus caus- "ing it to read, 'two or more,' instead of 'one or "'more.' The suggestion that as the words 'one or "'more' in Section 738 of the Revised Statutes contem- "plated a controversy in which 'two or more' defend- "ants would be involved, therefore the words 'one "or more' mean the same in the Act of 1875, *is falla- "cious.*"

This decision settles the contention of defendants upon that point. There remains in the case only the inquiry whether or not *corporate stock* of a mining corporation organized under the special statutes of Michigan, requiring the *locus in quo* of the stock to be in Michigan and the transfer of stock to be *only* upon the books of the corporation in Michigan, is such *personal property within the district* as referred to by the statute, and from which a lien or cloud can be removed by action under the statute which authorizes the court to make an order of appearance for the non-resident defendants. Was then the *situs* of this stock in the western district of Michigan, where the mining company was located.

III.

The question then is: was there property, real or personal, within the meaning of the statutes of the United States, within the district where the suit is brought, over which equity may acquire jurisdiction in *rem*, and thus have the power to deal with the defendants residing in Boston, so as to remove an encumbrance, lien or cloud upon the title thereto, and is the capital stock of the corporation in question, claimed or held by the Boston defendants in the law within the district where this suit is brought?"

Cook on Stock and Stockholders and Corporation Law, 2d edition, Sec. 8, states the rule as follows: "Justice Story in his Conflict of Laws, says that *questions relating to shares of stock* are to be determined "by the law *of the state* and of the corporation, and "can only be attached there." Citing, Black v. Zachary, 2d Howard 483.

The same author in Section 521, states the rule as follows: "It is clear, that at common law a corporation "has no lien upon the shares of its stockholders for "debts due from them to the company", citing Mass Iron Co. v. Hooper, 61 Mass. 183, and a number of cases; among others, Nield v. Jenny, 2 Cranch C. C. 188.

And the same author, Section 522, states the rule: "Such lien as this in favor of the corporation, *may be* "*created* by *statute* or by *charter*, and the weight of au- "thority holds that it may be created by law," citing, National Bank v. Watsonton Bank, 105 U. S. 217, and other cases.

And the same author in Section 523 states the rule: "When a lease is expressly given to a corporation by

"its *charter or by statute*, all persons *dealing* with the "corporations *are affected by it and must take notice of it.*"

And the same author in Section 528 states the rule, "A *lien* of a corporation, on shares of stock as security "for the payment of debts due to the corporation from "the owner, is a *lien only* as to the indebtedness of duly "recorded share holders. There is no lien on the stock "as to the debts of an intervening unrecorded owner "of the stock", citing cases.

All of which quotations from the authorities tend to show *that by legislative enactment, it may be determined* where the *locus in quo* of the stock exists, and *where* the stock in the law may be said to be, for the purpose of *attachment*, or of actual ownership and transfer. We maintain that *under the Michigan statutes*, the stock is ever present *where* the corporation is organized, does its business, and has its office within the state; and *where* it may be transferred upon the books of the company. That issuing a certificate of stock is but furnishing evidence of ownership in such stock, as a deed is evidence of ownership of realty; but that the stock itself in a Michigan mining corporation organized under the statute never changes its locus from the place of the organization of the corporation, by the transfer of the certificate of ownership, when by the provisions of the statute under which such corporation is organized, it is provided that the stock shall be transferred only on the books of the company within the state, as it does in Michigan. We insist that this is as much so as in the case of land within the state, the title to which is transferred by deed. The removing of the deed from the place where the land is located and out of the state, does not transfer the locus of that title. There are some exceptions to the rule adopted for pub-

lic policy, in fixing the place of personal taxation upon the owners of stock.

These exceptions but mark out the general rule, as we claim it, "Under our Michigan statutes, an *execu-* "*tion* may be *levied* against shares of stock in a corpor- "ation, where the judgment debtor is the legal holder "of the interest."

Newberry v. Detroit, L. S. & I. Co., 17 Mich. 141.
Van Norman v. Jackson Circuit Judge, 45 Mich. 210.

Our statute fixes the locus in quo of the stock of corporations organized under the laws of Michigan.

Section 4094 of Howell's Compilation of the Statutes, provides as follows:

"The stock of every such corporation *shall* be deemed *personal property*, and *shall be transferred only on the books of the company in such form as the by-laws direct or as the directors shall prescribe*, and such corporation shall at all times have a lien upon the stock of its members, for all debts due from them to such corporation, etc.

This determines that the stock is *personal property;* that it has a *fixed habitation*, and can be transferred *only upon the books of the company.* It can only be transferred upon the books of the company, and such ownership may be transferred upon the books of the company *without the issuing of any certificate of stock therefor.*

Section 4105 of Howell's statutes provides as follows: "It shall be lawful for any company associating under "this act to provide in the articles of association for "having the business office of such company out of this "state, and to hold any meeting of the stockholders or "board of directors of such company at such office so "provided for; but every such company having its

"business office out of this state, *shall have an office* "*for the transaction of business within this state, to be* "*also designated in such articles of association.*"

In the case of Chapman v. Colb, 47 Mich. 50, the court holds: "It has been *uniformly held* in this state, "that corporations *cannot remove from place to place*, "or establish branches for the transaction of their "regular corporate business, *unless so provided by law.*"

People v. Oakland County Bank, 1st Douglass, 282.
People v. Auditor General, 17 Mich. 161.
Underwood v. Waldron, 12 Mich. 73.
Detroit, Fire & Marine Ins. Co. v. Judge of Saginaw Circuit, 23 Mich. 492.

Thus, it appears that the statutory law of Michigan is, that a corporation organized under its provisions, shall have a fixed habitation, and that its stock shall be *transferable only on the books of the company*, and that there shall be an office in the state designated in the articles of association where such transfer is to be made.

Section 22 of Act —— 1879, being Compiler's Section 4097 of Howell's Compilation of the Statutes of Michigan, as to where business may be conducted, provides as follows: "It shall be lawful for any corporation formed under the provisions of this act to *conduct* its *mining* and *manufacturing business* in whole or in part at any place or places in the United States (or in foreign countries); and such corporation *shall be subject to the laws of this state* in regard to the corporation so far as the same shall be applicable to corporations formed under this act."

Act 197 of the laws of 1893 of Michigan, which provides for the keeping of a list of stockholders at the office within the state, after so providing adds as follows: "The *failure to keep* such list of stockholders

together with a statement of the number of shares of stock held by each, and *to keep a transfer book of the stock at such office or agency in this state*, shall be deemed a misuser of the charter of such corporation, and work a *forfeiture* thereof."

Section 7697 of Howell's Compilation of the Statutes of Michigan, provides follows: "*Any share or interest of a stockholder* in any bank, insurance company or *any other joint stock company* that is or may be incorporated under the authority of, or authorized to be created by any law of this state, may be taken in *execution* and sold in the following manner."

Section 7698 of Howell's Compilation of the Statutes of Michigan provides, "The officer shall *leave a copy of the execution* certified by him with the clerk, treasurer or cashier of the company, if there be any such officer; and if not, then with any officer or person who has, at the time, the custody of the books and papers of the corporation, and the property shall be considered seized on execution when such copy is left."

Then follow other provisions as to perfecting such execution seizure, and also a similar provision as to *attaching* such stock.

Section 7701 of Howell's Compilation of the Statutes provides as follows: "If the shares or interest of the judgment debtor, shall have been *attached* in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which shall have accrued from the levying of the attachment."

Section 7993 provides: "In attaching real estate or any right or interest in land, it shall not be necessary that the officer should enter upon the land or be within view of it; and in *attaching shares of stock, or the interest of a stockholder in any corporation organized under the laws of this state, the levy shall be made in the*

manner provided by law for the seizure of such property on execution."

Section 7994 provides as follows; "*Such attachment* shall bind the goods and chattels so *attached* from the time they were attached."

Prior to the amendment of 1877 (which is Sections 7993 and 7994 referred to above) there was no provision for attaching shares of stock in a corporation. The right to attach such shares is confined to the same cases in which an execution under the statute would be authorized. The right to *attach* is confined to cases where the debtor is a stockholder and the legal owner of the shares. If his right is merely equitable, or if he has transferred the shares, they are not liable either to attachment or execution.

Van Norman v. Jackson, C. J. 45 Mich. 210.
Blair v. Campton, 33 Mich. 414.

In Van Norman v. Jackson C. J., 45 Mich. page 209, the court held, "that the Revised Statutes of 1846 "made provision for subjecting to execution any share "or interest of a stockholder in any bank, insurance "company or *any other joint stock company incorporat-* "*ed under the authority of or authorized to be* "*created by any law of this state.* * * * The officer "of the company who is appointed to keep a record or "account of the shares or interest of the stockholders "therein shall upon exhibiting to him the execution, "be bound to give a certificate of the number of "shares, or amount of the interest held by such judg- "ment debtor. A copy of the execution and return "thereon certified by the officer executing the same "shall within fourteen days after the sale be left "with the officer of the company whose duty it may be "to keep a record of the transfer of shares, and the "purchaser *shall thereupon be entitled to a certificate or*

"*certificates of shares bought* by him upon paying the "parties therefor and for recording the transfer. Hav- "ing enacted these regulations, the legislature seemed "to have assumed that the suit might happen to be "*commenced* by seizure of the defendant's share or in- "terest on attachment and proceeding under that im- "pression it was declared in the next section, that if "*shares or interest* shall have been *attached* in the suit "in which execution issued, the purchaser shall be en- "titled to all the dividends which shall have accrued "after the levying of the attachment. It is unques- "tionable, however, that no provision was made for *at- "taching* such property *until 1877;* and the supposi "tion that such a suit could be so commenced at the "date of the previous enactment was a plain error. "Of course this mistaken view by the legislature "worked no change in the law. In 1877 it *was en- "acted that in attaching shares of stock*, or the interest "of the stockholder in any corporation organized un- "der the laws of this state, the levy will be made in "the manner provided by law for the seizure of such "property on execution."

Thus it appears that *since 1877* the right to bring action by *attachment* against the shares of stock held by a stockholder in a Michigan corporation has been established by the statute. This could be done the same as on other property, and the only limitation of that right is that the legal title to the stock must be in the defendant, and the mode of attaching as fixed by the statute is specific, viz: By the officer leaving a copy of his papers with the officer of the corporation having custody of its books and papers, and where the statute provides the stock shall be transferred, viz: At its local office in the state.

Thus it is plain that a suit may be brought by at-

tachment upon such stock against a *non-resident stockholder* in the statutory manner, because the stock is by virtue of the statutes of Michigan *within the state;* the same as the real estate of Michigan is within the state. If the owner of realty in Michigan lives in a foreign state or country, if he has deeded his property, attachment will not reach that property. So as to corporate stocks, as shown by the Michigan authorities quoted above; the owner having assigned that stock and disposed of it—whether in Michigan or out of Michigan—it cannot be attached; in the one instance the same as the other, the *locus* of the property by the statute is in Michigan, the mode of transfer of title in either case is by making conveyances, or any other mode of sale. The office of the register of deeds in the county furnished the presumptive evidence of ownership of land in a county in Michigan. The stock book and records of a corporation where transfers of stock must be made as fixed by the statute presumptively shows the ownership of the stock. The statutes so provide, from which we have quoted. Stock is made by the statute *personal* property and "*transferable only upon the books of the company;*" and therefore in the possession of the company. The assignment of a certificate of stock which is simply the *evidence* that a person has with the company that amount of stock, is simply an order to the company to transfer, upon its books the amount contained in the transfer, but all the time under the statute the stock is in Michigan, and in the possession of the company as trustee for the owner, and therefore *personal* property, against which a lien or cloud may be removed under the provisions of 18 U. S. Statutes at Large 472, and non-resident parties asserting adverse claims to such property may be brought in by proof of service by publication, as directed by the court under that act.

Thus it appears that by the Michigan statutes the stock of corporations organized under the law of this state is to be deemed ever present in the state, transferable only upon the books of the company and subject to execution, seizure, or action by attachment, by leaving a certified copy of the writ of attachment with the officer of the company having custody of the records of the corporate ownership, and by these statutes wherever a supplemental office is permitted outside of the state for certain purposes its action "shall be subject to the laws of this state," as appears in Section 4097 in Howell's Compilation of the Statutes quoted above. The courts of other states as well as this court have held that the *locus* of such stock is in the state where authorized.

In the case of Evans v. Monot, 4 Jones Eq. N. C. 227, which is a case similar to the one at bar, a plea to the jurisdiction was filed. That court held: "A corporation created by the act of the legis-"lature having its property and carrying on its busi-"ness within this state, has its existence here, al-"though its office business is carried on in another "state. Shares of stock in an incorporated mining "company *belonging to a non-resident*, are effects or es-"tate owned by him *here*."

The court in this case held that equity had jurisdiction in the matter. "That the corporation having "been created *here* and the land upon which it has to "operate being situated here; it is difficult to conceive "how it acquired the ability to remove itself so as to "have an existence in another state and cease to exist "here. The proposition seems too plain for argument. "The corporation is a mere *creature of our law and it "must of necessity have its existence in our state;* not-"withstanding the fact that its officers, for their own

"convenience, keep the books and transact office busi-
"ness distinct from its mining operations, in the city
"of New York. It is true a share of the stock *is per-*
"*sonal* estate in the sense that it will at the death of
"the owner devolve upon his personal representatives;
"but it would seem that it cannot be here, in the sense
"of attending his person, for it is *but one of many*
"*parts, the aggregate of which make a body, which has*
"*its existence fixed in this state, and creates a right or*
"*duty which must be awarded and performed here and*
"*cannot be enforced in any other country. In other*
"*words, it is an estate of the shareholder here, in the*
"*hands of the corporation for his benefit.*"

This North Carolina court concludes that the plea to the jurisdiction, was not well founded, because no matter where the certificate was, the stock was *personal property* and had a *fixed location where the corporation had its existence.*

This is just our claim with regard to the stock of The Huron Copper Mining Company. That company was organized and exists under the laws of the state of Michigan. The Boston defendants are charged with fraud, whereby a cloud has been placed upon the stock in question. The bill is filed to remove that cloud. Clearly it is personal property within the jurisdiction of the court. Under the United States statutes the court had the power to make an order to bring the defendants Demmon and Watson into court. The order was made and duly published, but the defendant corporation, through the defendant Watson as president of the company, enters a special plea to the jurisdiction; Watson signed the affidavit to the plea and asserted that himself as president and Demmon, the secretary and treasurer (both of Boston), are necessary and *indispensable* parties to the case, but refuse to ap-

pear, notwithstanding the published order of the court, and raise the question of jurisdiction now here presented, through the plea of the corporation that there is no property real or personal within the jurisdiction of the court. It is an attempt to avoid the result of their fraud, so forcibly appearing in the allegations of the bill, which thus far stand unanswered, and which defendants are seeking to avoid answering.

In the case of the National Bank v. L. S. & M. S. R. Co., 21 Ohio State, 221, it was held, as to non-resident defendants in an attachment, as follows: "It will be observed that service by publication is authorized upon the concurrence of three conditions: first, non-resident defendants; second, that he is owner of *property within this state;* and third, that such property is sought to be taken by a writ. The property *attached was stock*, which had been transferred to a third person, but was not transferred upon the books of the company; the court holding, that no title passed by the transfer of the stock, without the transfer upon the books of the company; that it was property within the jurisdiction of the court."

The Ohio court holding that the transfer must be recorded as well as made, and a transfer made upon the books of the company to the purchaser before a valid transfer existed. Our court holds that the stock must be transferred upon the books of the company; but holds that a bona fide sale and assignment of the certificate before attachment would defeat the attachment.

The learned district judge in the trial of this case in the court below, in his opinion, giving his reason for his conclusion, though greatly in doubt, as he states, uses the following language: "It has been held by "the federal courts in a number of decisions which

"this court must respect, that the right of a share-"holder is in the nature of a *chose in action*—that it is "personal property and follows the person of the "owner. The language of the courts in general is not "altogether harmonious in respect to the the character "of the peculiar title and right which the shareholder "has. It appears to me that the above stated doctrine "of the federal courts is in the clearest analogy to the "general doctrine, that the *situs* or locality of personal "property is that of the person holding the legal title "to it." 82 Fed. Reporter, 779.

We think the learned district judge was in error in saying that the federal courts have held that because stock is in the nature of a *chose in action and personal property*, it therefore follows the person of the owner, notwithstanding the statute of the state under which the corporation is organized. And we shall endeavor to point out such error.

In the case of Chesapeake & Ohio Railway Co. v. Payne & Co., 29 Gratton's Reports, it was held, that shares of stock were *attachable under the provisions of the statute, which allowed the attachment of all the estate or property of a non-resident debtor within the commonwealth;* the court using the following language: "*Whether shares* of a stockholder in a joint stock company be *chattels or choses in action*, the better opinion seems to be that they partake of the nature *of choses in action.*" Citing Angel & Ames on Corporations, Sec. 560 and notes; also citing, "Burkesdale v. Finney, 14 Gratton, 338, 357; *but whether they be one or the other* they certainly constitute a part of the owner's estate, and as such are liable for the payment of his debts, and to a proceeding by attachment against him. The statute declares that they shall be deemed *personal estate.*"

It will be noticed that this is substantially the pro-

vision of our statute as to the character of the property, viz: "The stock of every such corporation shall be deemed *personal property.*" The only difference between the statutes is that one declares it shall be deemed *personal property* and the other *personal estate;* and the federal jurisdictional act under consideration provides as follows: "To remove any encumbrance, lien or cloud upon the title to real or personal estate within the district where suit is brought."

Thus, the case cited sustains our position that the property, whether it be deemed a chattel *or a chose in action*, it is immaterial; it is by virtue of the statute personal property, personal estate; it is *present within the state*, subject to be reached by attachment or other legal proceeding, until that present title has been transferred out of the hands of the defendant.

In the case of Winslow et al v. Fletcher et al, appearing in 13 American & Eng. Corporation cases, 39, 40, 44 and 45—a Connecticut case—it appears that there was an attempt in that case to reach stock in the hands of the Connecticut Mutual Life Insurance Company, which was stock in an Indiana bank, which had been pledged as collateral security in Connecticut; which left a margin of $50,000 over and above the indebtedness secured by the pledge; the court held that the stock *was not the property in the state of Connecticut*, the court in its opinion using the following language: "By coming here, they can only succeed upon the theory that the stock is in some sense located in this state. Such a theory is inconsistent with the *well settled rule that stock in a corporation for the purposes of an attachment, has its situs where the corporation is located.*" Citing

Norton v. Grafflin, 13 Atl. Rep. 341 (Ind.)
Martin v. Mobile O. R. R. Co. 7 Bush. (Ky.) 116.
Cook on Stock & Stockholders, p. 503, note 2.

In the case of Plympton et al v. Bigelow, 93 N. Y. 592, it was held, "that a corporation has its domicile and residence *only within the bounds of the sovereignty which created it.* That it is incapable of passing personally beyond that jurisdiction, and so it cannot be deemed present in a state other than of its origin, although its officers are present and it transacts its business in that state. The condition, therefore, was that the res must be within the jurisdiction in order to make an effectual seizure, and is not answered in respect to shares in a foreign corporation by the persons here, or its officers, or the fact that it has property and is transacting business here."

The court in that case on page 598, use the following language: "We regard the question to be too *firmly settled* by repeated adjudication of the federal and state courts *to admit of further controversy*, that the corporation has its domicile and residence alone within the bounds of the sovereignty which created it, and that it is *incapable of passing personally beyond that jurisdiction.*"

Bank of Augusts v. Irwin, 13 Peters 519.
Lafayette Ins. Co. v. French, 18 How. (U.S.) 404.
Merrick v. Van Santward, 34 N. Y. 208.
Stevens v. Phoenix Ins. Co., 41 N. Y. 150.

In the case of Christmas v. Biddel, 13 Pa. St. 223, the court held, that *stock* by a Mississippi corporation *could not be attached in that state;* using the following language: "This *stock* is held and transferred according to the *law of its creation;* the statutes of Mississippi and the books of the bank only, either in person or by the holder, or by his attorney duly appointed. It will hardly be contended that lands in Mississippi could be *attached because the owner had sent to this city his title deed* to a broker with power to sell the same

and raise money, and yet *there is in fact no difference.* It is bank stock which is attached in this case, and the individual to whom the certificate of stock was sent, with power to sell, is made the garnishee."

In the case of Moore v. Gennett, 2 Tenn. & Ch. Rep. 375, the court held; that the creditor of a citizen of this state, can acquire no lien upon the interest of a debtor in *stock* of an insurance company, chartered by and created in this state by proceedings there. He must *attach the stock* of the defendant *there*, the court holding as follows: "The legislature of a state can only bind a person and property within its territorial juris diction, citing

Blisschoff v. Witheral, 9 Wall. 812.
T. R. R. Co. v. B. R. R. Co. 20 Wall. 147.

In the language of the supreme court of the United States in Bank of Augusta v. Earl, 13 Peters, 588, it was held: "It is true, that a corporation *can have no legal existence out of the boundaries of the sovereignty by which it is created.* It exists only in contemplation of law, and by force of the law, and when that law ceases to operate and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. See Louisville R'y Co. v. Letson, 2 How. 559.

In the case of Covington Drawbridge Co. v. Shepard et al, 20 How. 232, the court held: "Whenever the law of a state is held to be a public one, to be judicially taken notice of by the state courts, it *must be regarded in like manner by the court of the United States when it is requested to administer the law of the state.*"

Counsel for the defendant in the case at bar in the court below, used the following language: "But if the complainants could show that in Michigan law these

shares of stock in The Huron Mining Company were personal property, *situated within this judicial district, that would not be enough* to support their contention against the present plea. This suit is *not pending in the courts of Michigan*, but in a court of the United States, and is a suit not at law, but in equity—a proceeding in equity under a particular provision of the United States statute. Accordingly the principles, and rules of practice which are to govern this case are themselves not absolutely controlled by statutes, or decisions made under state authority."

We think it is quite plain from the case which we have just cited, that when this court is administering the law of a state, determining the locus in quo of the stock of a corporation organized under the law of the state, it will have regard for such law, and that there is no force in this case to the suggestion of counsel for defendants.

In the case in 20 Howard 232, just cited, the court held as follows: "In the case of Louisville, Cincinnati & Charleston R. R. Co. v. Letson, 2 How. 497, the court overruled so much of its opinion as authorized a corporation to plead in abatement; that one or more of the incorporators, plaintiffs or defendants, were citizens of a different state from the one described; and held that the members of the corporate body, must be *presumed* to be cititens of the state, in which the corporation was domiciled and that both parties were *estopped* from denying it, and that in as much as the incorporators were not parties to the suit in their *individual characters*, but merely as members and component parts of the body, or legal entity which the charter created, the members which composed it ought to be presumed, so far as its contracts and liabilities are concerned, to reside *where the domi-*

cile of the body was fixed by law, and where also they could act as one person, and to the same extent; and for the same purpose be also regarded a citizen of the state from which this legal being derived its existence and its faculties and powers."

In the case of Bank of Augusta v. Earl, 13 Peters 519, the court held: that a corporation could have no legal existence outside of the dominion of the state by which it is created. Consequently the Covington Drawbridge Co., being chartered by the state of Indiana necessarily and its home and place of business in that state.

In the case of Tioga R. R. Co. v. Bloss. & C. R. R. Co., 20 Wall. 137, in the opinion of Justice Hunt, concurred in by Justice Field, the court held: "The cases establish that a corporation has its existence and domicile *only* within the jurisdiction of its origin, and that in its nature it is incapable of migration to another jurisdiction."

In Bank of Augusta v. Earl, 13 Peters 531, it was said: "The artificial person or legal entity known to common law as a corporation can have no legal existence out of the bounds of the sovereignty by which it is created, that it exists only in contemplation of law and by force of law, and where that law ceases to operate, the corporation can have no existence. It must dwell in the place of its creation."

The same doctrine was reiterated and the above language quoted with approbation by Chief Justice Taney, in Railroad Co. v. Wheeler, 66 U. S. 133.

In Day v. Indiana Rubber Mfg. Co., 1st Blatchf. 628, it was held, that a corporation of New Jersey, although it had a place for the storage and sale of its goods in New York, was not an inhabitant of that city, and that it could have no corporate existence beyond

the territory of New Jersey. These principles have never been disturbed, although other doctrines contained in these cases in regard to the residence of a corporation when plaintiff in an action have been reconsidered.

It is also established in the courts of New York, in Merrick v. Santward, 34 N. Y. 208, that a foreign corporation is a citizen of the state from which it obtains its charter, and that it is incapable of migration.

To the same import, see Stevens v. Insurance Co., 41 N. Y. 149.

In the case of Lafayette Ins. Co. v. French, 18 How. 404, the court held as follows: "This corporation *existing only* by virtue of the law of Indiana, *cannot be deemed to pass personalty beyond the limits of that state.*"

Bank of Augusta v. Earl, 13 Peters 519.

"But it does not necessarily follow that a valid judgment could be recovered against it only in that state. A corporation may sue in a foreign state by its attorney there, and if it fails in the suit be subject to a judgment for costs," etc.

The court further held: "A corporation created by Indiana, can transact business in Ohio only with the consent, express or implied, of the latter state." 13 Peters, 519. "This consent may be accompanied by such conditions as Ohio may see fit to impose", etc.

Thus it will be seen that the decisions of this court are in accord with and fully sustain the position of the state courts as to the *situs* of the corporation, *and of its stock;* and we think it is beyond cavil that the fixed habitation of the *stock* of the Huron Copper Mining Co. was within the Northern District of Michigan, and could not be shifted. That it was within that state and district; that the statutes of the state so provided

and the legislature expressly enacted, that the stock shall be transferred *only* on the books of the company; and that there should be an office in the state for the transaction of the business of the company, and that such office should be designated in the articles of association. This court holding in Augusta v. Earl, 13 Peters 588, that the corporation had no legal existence out of the boundaries of the sovereignty which created it.

"In legal contemplation, shares of stock of a corporation are property in the state where the corporation is created; at least for the purpose of suit and proceeding in rem. As stated in First Cook on Stock and Stockholders, 3d Ed. Section 485, "Shares of stock in a corporation are personal property, whose location is in the state where the corporation is created. It is true that for the purpose of taxation and some other similar purposes, stock follows the domicile of its owner; but considered as property, separate from its owner, stock is in existence only in the state of the corporation." See 2d Thompson's Com. on Law of Corporations, Sec. 2766.

In Christmas v. Biddel, 13 Pa. St. 222, the court held, that an attachment attempted to be levied in Philadelphia on *shares of stock* of a *Mississippi bank*, the certificates of which with power of sale were in the hands of a Philadelphia broker, could not be maintained; since the attachment process was a proceeding in *rem*, and the matter and thing attached *must be in the power and jurisdiction of the court; which these shares were not, being legally located in Mississippi*, and therefore *no more subject to attachment in Pennsylvania, because the certificates were there than lands in Mississippi would be if the owner had sent to Philadelphia his title deed with power to a broker to sell the same.*"

In Moore v. Gennett, 2 Tenn. Ch. 375, an attempt *to attach* in *New York the stock* of a *Tennessee* corporation was held *ineffectual*. The court there said: "The stock in controversy is the stock of an insurance company, chartered by and located in this state. Rainey & Co. held only the certificate of stock issued to Spencer. If the certificate had been attached, the court could only have control of the *paper—not of the res.*"

In the case of Plympton v. Bigelow, 93 N. Y. 592, the court held: "The foreign corporation is not here because its agents are here; nor because it has property here; nor is the stock here because the corporation has property, or is conducting its business in this state: the right of a share holder is derived from a corporation under its charter, or the laws of the state which created it. It is enforced by judicial proceedings in the local courts. * * * We do not doubt, that shares for the purpose of *attachment proceedings* may be deemed to be in the possession of a corporation which issued them: *but only at the place where the corporation by intendment of law always remains, to-wit: in the state or county of its creation.*"

This decision has been recognized as sound and conclusive by numerous text writers, and has been followed by other courts.

First Cook on Stock and Stockholders, Sec. 485.
Second Thompson's Com. on Law of Corporations, Sec. 2766.

In Armor Bros. Banking Co. v. Smith, 20 S. W. 690 (Mo.), the court refused to sustain an attempted attachment in Missouri of stock of a Texas corporation; holding that the *statutory provisions* of *Missouri* authorized *attachment* of *shares* of stock in a corporation, *applied* to *domestic corporations only*. Citing with approval, Plympton v. Bigelow, 93 N. Y. 593.

So in Ireland v. Globe Milling & Reduction Co., 32 Atl. Rep. 921 (R. I.), the court held: "We think it well settled, that shares of stock owned by a non-resident defendant in a foreign corporation *cannot be reached by process of attachment*, although the officers of the corporation are within the state and the business of the corporation is being carried on here. The *situs* of the stock for the purpose of *attachment* and *execution* is the domicile of the corporation, *and that place only.*'

In Young v. South Tredgar Iron Co., 85 Tenn. 189, the court proposed this inquiry as the test of the legal location of stock:

"Q. What then is the *situs* of the corporation itself? *For that will determine the situs of the stock.*" See

Ches. & O. R. R. Co. v. Payne, 29 Gratt. 502.
S. V. R. R. Co. v. Griffith, 76 Va. 913.

In Read Ice Cream Co. v. Stevens, 62 Ill. App. 334, it was held that "Shares of stock can be attached *only* in the state creating the corporation. There are cases in which by legal *fiction*, corporate stock has sometimes been held to follow the person of the owner *for the purpose of taxation.*"

1st Cook on Stock and Stockholders, Sec. 485.

In the case of Street Railway Company v. Morrow, 87 Tenn. 406, it was held, that stock owned by non-residents in a corporation of the state of Tennessee, was *taxable* within that state. In the course of the opinion the court said: "The *fiction* that personal property has no *situs* but that of the owner, will *always yield* whenever the *actual fact is opposed to fiction;* and when the purposes of justice likewise demand that the *actual situs* shall be examined. Shares are a species of intangible personal property. They have no actual situs such as tangible personals may have. The situs of such an anomalous kind of intangible property may

very well be fixed for the *purpose of taxation* at the place where the corporation has its situs. Such a situs is more nearly in accord with the fact than any other, and the location is in accord with reason and the demands of justice."

The underlying principle governing all proceedings *in rem* in Michigan, as regards corporate shares, *was recognized* by this court in Miller v. The United States, 11 Wall. 296, in which there was a seizure by a marshal, under the confiscation act, of *shares of a Michigan corporation*, through notice to the office of the corporation in Michigan which seizure was sustained, *although the certificates for the shares were not found.* Thus the court deciding that "*A corporation holds its stock as a quasi trustee for its stockholders.*" That is just what we claim in this case; that the corporation in Michigan holds the stock for the certificate holder, the certificate being only evidence of the fact.

As stated in Young v. South Tredgar Iron Co., 85 Tenn. 189, "These stock certificates were the *mere evidence of the ownership of shares—indicia* of his interest in the earnings and profits of the company. Their seizure by an execution or by an attachment would not be a seizure or levy upon the stock itself without more. * * * Hence the locality of the certificates or their actual seizure is unimportant."

Defendants' counsel in the court below cited Howard v. Cassopolis, 35 Mich. 474 as sustaining their position that the ownership of the stock follows the certificate and the holder.

As will be found by examination of the opinion, it was simply one of the cases where as a matter of policy for the purposes of personal *taxation* against the holder of the certificate, the court held, that it was properly taxable but is not in conflict with the general principle

advanced by the large number of cases to which we have referred.

Section 560 of Angell & Ames on Corporations, states the doctrine as follows: "Shares in joint stock companies are not, however, strictly speaking, chattels, and it has been considered that they bear a greater *resemblance to choses in action*, or in other words they are *merely evidence of property*. They are, it is held, mere demands for dividends as they become due, and differ from movable property which is capable of possession and manual apprehension."

This court in Bank v. Lanier, 11 Wa. 369, which was an action brought against the bank to recover damages for the refusal of the bank to permit the transfer of certain shares of stock, held that the certificate of stock was a form adopted to *assure the purchaser that he can buy with safety*. He is told under the seal of the corporation, that the shareholder *is entitled to so much stock, which can be transferred on the books of the company*, in person or by attorney, *when the certificates are surrendered, but not otherwise*. This is a notification to all persons interested, to know that whoever in good faith buys the stock, and produces to the corporation certificates regularly assigned, *with power to transfer*, is entitled to have the stock *transferred to him*. The notification goes further, for it assures the holder that the corporation will not transfer the stock to any one not in possession of the certificates."

Thus, this court held in that case, that the certificates were simply the *muniments of title* of the stock—not the property itself; *simply the evidence of it*, and the conclusive evidence of the right to it; and so long as that certificate was out, and in the hands of a bona fide holder, for value, would estop the corporation from denying that the holder was an owner of so much

stock, *held in trust by the corporation*, and to be transferred upon the books of the company as directed by him.

Thus, it is apparent that while this court has held that a certificate of stock is in the *nature of a chose in action*, as have other courts, it has not held as construed by Judge Severens in his opinion in this case, that "the federal courts, in a number of decisions which this court must respect, that the right of the share holder is in the nature of a chose in action—that it is personal property, *and follows the person of the owner*." That is stating the holding of this court too strong, as this court has simply held that the certificate was the evidence that its holder was the owner of stock which was in the possession of the corporation. We have been unable to find any Federal case under facts similar to those in the case at bar, or analogous, that holds where the statutes of the state as we have pointed out them to be in Michigan, that the stock as personalty follows the person of the owner out of the state and therefore not present within the state of its creation.

Defendants' counsel refer to Killgour v. New Orleans Gas Light Co., 2 Woods 144, cited in the note to Section 25 of Desty's Fed. Procedure, as holding that "If the owner of stock lives in another district, the stock follows the person."

This case cannot be considered as authority for the claim that the stock follows the person. This case was decided in 1875. Suit was brought in the District of Louisiana against two Louisiana corporations, and certain individual defendants, including a resident of the state of New York. The complainant claimed to be the equitable owner of 1,500 shares of Crescent City Gas Light Company stock, which the non-resident defendant had, through fraudulent

means, acquired through a sale for failure to pay assessments and by means of which, with other stock, such defendant had *unlawfully* brought about a consolidation of that company into the new Orleans Gas Light Company, under which consolidation he had received 625 shares of the consolidated company in lieu of the 1,500 shares. The prayer was that the *consolidation* be set aside and the complainant declared to be the rightful owner of the 1,500 *original* shares, *or, if the consolidation was sustained*, that the complainant be declared the rightful owner of *625 shares of stock of the new company*.

The cause was heard at circuit on demurrer of the defendants, which was overruled. In deciding the demurrer the judge prematurely, without application or motion of any kind, also decided not to grant an order requiring the New York defendant to appear and plead, answer or demur. The judge held that the claim was *not for any particular number of shares* of the *new* company that *could be designated* by number, or identified as possessed by a particular person, and that the *right asserted* by the complainant to *undesignated shares of stock was a chose in action*, but *neither real nor personal property* within the meaning of Section 738 of the Revised Statutes.

The judge also expressed the views that if the claim was for 1,500 shares of the stock of the *old company*, those shares could not be considered as property within the district, since, if personal property they followed the person of the non-resident defendant by whom they have been acquired. It should be noted, however, that by reason of the *consolidation* these 1,500 shares had *ceased to exist*, having been *converted into shares of the new company*.

While it is stated in the opinion that the question

had been argued by counsel, the extent of the discussion may be inferred from the fact that none of the cases cited in this brief were considered, but that the authorities cited were all ancient, and with scarcely an exception, were either irrelevant or failed to sustain the propositions for which they were cited. The authorities cited will be briefly considered and are as follows:

The English case of King v. Capper, 5 Price 217, was decided in 1818. In this case, in the matter of one Bowler attainted for felony, a question arose as to certain "capital or joint stock consolidated annuities transferable at the Bank of England." It was held that this "stock" in this relation was difficult of definition, not being an ancient subject of property, nor known to the common law, but it was declared to be a hereditament. Of course this decision had no reference to stock of a corporation.

In the English case of Bradley v. Goldsworth, 3 M. & W. 422, decided in 1838, it was held that an agreement for sale and delivery of shares in the London and Birmingham Railway Company was not an agreement respecting an interest in land, which must be in writing, but that the shares were personal property and had been so delcared to be by act of parliament, and that transfer thereof could be compelled under an oral agreement.

In the English case of Edwards v. Hall, 6 Deg. M. & G. 74, S. C. 35, Eng. L. & E. 433, decided in 1855, it was again held that shares in an incorporated company were not an interest in land.

In the case of Tippetts v. Walker, 4 Mass. 595, decided in 1808, the court merely held that the property of a member of a turnpike corporation "is a right to receive a proportional part of the toll, which is considered as personal estate" (page 598).

In the case of Johns v. Johns, 1 Ohio State 350, decided in 1853, it was held that corporate shares are personal property.

In *none* of these cases, it will be perceived, was any question as to the *situs* of corporate shares either involved or considered.

The case of Morgan v. Parham, 16 Wall. 471, cited as authority for the proposition that "personal property follows the person", is not a decision to that effect, but merely a decision that a vessel registered at the port of New York, and touching the port of Mobile, as well as other gulf ports, in the course of trade, could not be taxed as property within the state of Alabama; but was only subject to taxation at the home port, and this not by virtue of the owner's residence there, but by virtue of the marine registry.

The case of Kilgour v. The New Orleans Gas Light Company, 2 Woods 144, should therefore have no weight in determining the question now before this court.

We submit that under the statutes of Michigan which we have quoted, and by the great weight of authority to which we have referred, construing these statutes and similar ones in other states, it is clear that the stock of the defendant corporation is personal property within the juristiction of the court in the Western District of Michigan, Northern Division, transferrable only upon the books of the company, and that the statute of the United States authorizing the bringing in of non-resident defendants, in an action as to the title to real or personal property "to remove "any encumbrance, lien or cloud upon the title to real "or personal property within the district, where the "suit is brought", applies to this case, and that the

order of the court, directing the absent defendants to appear, plead, answer or demur (see p. 33 of Record), gave the court jurisdiction over them; and that the holding of the lower court should be reversed.

F. O. CLARK,
Solicitor and of Counsel for Complainants.

FILED
DEC 7 1899
JAMES H. McKENNEY,
Clerk

No. 100.

100

Brief of Chadbourne for Appellee

SUPREME COURT

Of the United States.

Filed Dec. 7, 1899.

FELIX JELLENIK,
GEORGE SHIRAS. 3RD.
C. C. DICKEY, Trustee, et al.,
Appellants,
vs.
THE HURON COPPER MINING COMPANY,
J. C. WATSON, et al.,
Defendants.

Appeal from the Circuit Court of the United States for the Western District of Michigan. In Equity.

BRIEF OF T. L. CHADBOURNE,

Solicitor for Huron Copper Mining Company.

The Supreme Court of the United States.

FELIX JELLENIK,
GEORGE SHIRAS, 3RD.
C. C. DICKEY, Trustee, et al.,
Appellants,
vs.
THE HURON COPPER MINING COMPANY,
J. C. WATSON, et al.,
Defendants.

Appeal from the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

Brief of T. L. Chadbourne Solicitor for the Huron Copper Mining Company, one of the Appellees.

The defendant, The Huron Copper Mining Company, appeared in this suit in the Court below, and pleaded to the Bill of Complaint to the jurisdiction of the Court, on the ground that Watson and Demmon, citizens of the State of Massachusetts, and Smith, a citizen of Michigan but residing in the Eastern District thereof, were necessary and indispensable parties to the suit, and that none of them were inhabitants of the Western District of Michigan, and that no subpoena or process of law had been served upon them, and that they did not voluntarily appear in the cause. That the stock of the Huron Copper Mining Company, a part of which was the subject of the suit, was not property within the said District.

The Court below dismissed the Bill in conformity with the prayer of the plea, holding that the publication, by which it was sought to bring in the said indispensable parties, would not avail for that purpose.

The Huron Copper Mining is a corporation "organized under the statutes of Michigan, being under an Act to authorize the formation of corporations for mining, smelting or manufacturing iron, copper, mineral, coal, silver or other ores or minerals, and for other manufacturing purposes, approved February 5th, 1853, and Acts amendatory thereof," as will appear in the Bill of Complaint on page 1 of the Record. This legislation is now represented by Chapter 123, Vol. 1 Howell's Annotated Stat. of Michigan.

The question in the case is whether the defendants, Watson and Demmon, could be brought into the suit by publication under the provisions of the Act of Congress of March 3rd, 1875, Vol. 18, Statutes at Large, page 470.

This statute reads as follows: "That when in any suit commenced in any Circuit Court of the United States, to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the District where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within the said District, or shall not voluntarily appear thereto, it shall be lawful for the Court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be:

Or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the Court may direct, not less than once a week for six consecutive weeks;

And in case such absent defendant shall not appear, plead, answer or demur, within the time so limited or within some further time to be allowed by the Court in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the Court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said District.

But said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit, and under the jurisdiction of the Court therein within such District. * * * * And when a part of the said real or personal property against which such proceeding shall be taken shall be within another district, but within the same State, said suit may be brought in either district in said State."

I.

Complainants insist that the stock of the Huron Copper Mining Company, one of the defendants, alleged to belong to Demmon and Watson, two of the defendants, who are citizens and residents of the State of Massachusetts, was personal property within the Western District of Michigan in the sense of the federal statute above cited, because they say that kind of property is declared by Michigan statutes to

be personal property, subject to attachment and execution.

We submit, first, that the Federal statute in question speaks for itself, and that the kind of property in question is not embraced in its provisions.

"Personal property," without other designation, means tangible personal property,—chattels.

This is its common law meaning. Blackstone's Commentaries, Book 2, page 388, Chap. 25. That this is the meaning of the phrase "personal property" in the statute seems to clearly appear by its terms; thus the "order" for the appearance of the non-resident party is required to be served "upon the person or persons in possession or charge of said property, if any there be,"—language which is inapplicable to this species of property.

If the statute covers corporate stock, why should it not also cover a mere credit,—an indebtedness from a resident of Michigan to a resident of Massachusetts, which is property of the same species?

Take other words of the statute: "When a part of said property shall be within another district but within the same State, said suit may be brought in either District in said State."

These words appropriately designate real, or tangible personal property in several parcels, situate in different places in the same State.

They are not apt to describe several parcels of corporate stock in the State, for if it is true that the stock of such corporations always has its *situs* in the State creating the corporation, as complainants argue, the several parcels of corporate stock of the same corporation would necessarily all be in the same place; that is in the State; and several parcels of stock of two or more of such corporations would,

being in the State as a whole, be in every part of it and in every district of it. The phrase last above quoted would seem therefore clearly to point out tangible personal property,—chattels—which may be within one district of the State and not within another district, or may be, in several parcels, in two districts; but not corporate stock, which if in the State at all, is in every part of the State.

The argument is that such stock, although belonging to a non-resident of the State, is personal property within the State, because of the regulations of the State and because of the creation of the corporation by the State. The regulations of the State are that such stock is personal property, and is subject, at least as to owners resident in the State, to attachment and execution, and such stock may be so levied upon by execution or attachment issuing from any County in the State. See Howell's Annotated Statutes of Michigan, Volume 2, Section 7991.

The *situs* of such stock, therefore, is by local law, for the purpose of attachment and execution, at least with respect to residents of the State, anywhere and everywhere in the State, and the words of the Federal statute "within another district" of the State, are inapplicable and meaningless so far as this class of property is concerned. The Federal statute has no reference to State regulations and definitions, which may and do vary in different States. By "personal property" it means that which is personal property everywhere—chattels,—property which the Court can take in charge by a Receiver. Corporate stock is made in Michigan personal property by Statute. It might be in the same way made real property. Would that bring it within the other clause of the statute?

In Kentucky, in Price vs. Price, 6 Dana, 107, and in Copeland vs. Copeland, 7 Bush, 349 (and in other cases collected in Note 1, on page 22, Vol. 1, Cook on Stock and Stockholders, 3rd Edition), the Supreme Court declared certain corporate stock to be real estate, and after the decision a statute was passed declaring such stock personal property.

So a State might declare this kind of property to be neither real nor personal property, and class it by itself; might call it "property in the nature of a chose in action," and give it status different from personal property in general.

The federal statute in question can not mean one thing in one State and a different thing in another State, or one thing at one time and another at a later or earlier time.

If, as complainant urges, this kind of corporate stock is personal property within the district within the meaning of the Federal statute, because the corporation has its residence in Michigan and because of the Michigan statutes relating to its seizure upon process, then, in many cases, the Federal court might be found powerless to possess itself of the property for want of such corporate officers in the State as are necessary, under the statute of the State, to receive service for the corporation of any process or order of the Court which might issue for the purposes of impounding stock. See Howell's Statutes, Section 4112. Indeed the *entire* business of corporations of this class is authorized to be done outside the State. See 3rd Howell's Stat. Sec. 4097.

Chattels can always be seized by the Court. Corporate stock could be seized only where there was some officer of the corporation on whom the notice or order of the Court could be served. It seems to

that Congress could not have had in mind that species of property in framing this statute.

A statute should not be construed as altering the common law further than its words import. There is no call for the construction of this statute urged by the complainants. The natural import of the words "personal property," as here used, must be heavily pressed to yield the meaning contended for by them, and the statute can as reasonably be read to cover mere debts, as corporate stock.

Shaw vs. Merchants, etc., Bank, 11 Otto, 557.

The only case in the Federal Courts determining this precise question (so far as the writer knows) is against the complainants' contention. It is Kilgore vs. the New Orleans Gas, etc, Company, 2 Woods, 144. holding that such property is not included within the terms of the statute. The absence of all attempt to treat corporate stock as falling within the words of this statute, except in the instance above noted, which failed, (which is absolute, so far as the writer knows) seems significant of a general concurrance of opinion upon the subject against complainants' contention. There is certainly no kind of property so widely distributed over the Union as corporate stock, and none therefore more likely to have been made use of for the purpose of acquiring jurisdiction over non-resident defendants in the Federal tribunals. The case of Non-Magnetic Watch Company vs. Association, etc., 44 Federal Reporter, page 6, is also not without suggestiveness upon the question here under discussion.

Statutes allowing levy by attachment upon "real and personal property" have been construed not to authorize levy upon corporate stock.

Haley vs. Reid, 16 Georgia, 437.

Merchants, etc', Company vs. Brower, 38 Texas, 280.

Foster vs. Potter, 37 Missouri, 535.

(The three cases last above given are cited from a text-book, without opportunity for direct verification.)

Proceedings under this Federal statute are essentially proceedings *in rem*. The presence of the thing which is the subject of the litigation in the District where the litigation is instituted, is essential to the jurisdiction.

Cooper vs. Reynolds, 10 Wallace, 318.

Pennoyer vs Neff, 95 U. S., 714.

No actual seizure of this stock in question is possible, nor has any been attempted, nor is any asked for. There is no statute in Michigan authorizing the seizure of corporate stock except in case of a Writ of Execution or Writ of Attachment, and in these cases the mode of seizure is pointed out by the statute and must be strictly followed, (if indeed the stock of a non-resident of the State can be seized on these writs;) but no statute in Michigan authorizes the seizure of such stock belonging to non-residents of the State, by any other or different process or in any other mode.

There are no "persons in possession or charge of said property" in the words of the Federal statute, to whom notice can be given. If the officers of the corporation can be said to be in charge of the stock in question, they were in Massachusetts, where they were authorized by the Laws of Michigan to be, and there were their records of stock as they were also authorized to be. The Bill of Complaint shows no person in Michigan in whose possession these shares are alleged to be. It contents itself with setting up

the constructive situation of them in Michigan, without asserting as a fact that they are possessed by anyone within its borders.

To this effect, (that is, that this species of property is not the kind of property contemplated by the Federal statute) is the only actual construction which that legislation has received at the hands of the Federal Courts. See the Non-Magnetic Watch Case and the Kilgore case above noted.

II.

Complainants' solicitor has fallen into a very serious error of fact in his brief. He states on pages 14 and 16 of his brief, in substance, that the Statutes of Michigan provide that the books in which are recorded the transfer and ownership of shares in corporations of the kind in question here must be kept in Michigan, and stock must be there transferred. The fact is just the contrary. The statute regulating the subject, for the class of corporations to which the Huron Copper Mining Company belongs, reads, and read at the time suit was commenced, as follows, (that portion here printed in italics is the portion which counsel has not quoted): "*That all corporations formed under the laws of this State and whose principal office for the transaction of business shall be located without the limits of this State, are hereby required, when such corporations have an office within this State, to keep a list of all stockholders of such corporation, together with a statement of the number of shares held by each stockholder, and a transfer book of the stock thereof at their agency or office in this State, and if there be more than one, then at some one of such agencies or offices to be*

designated by the officers of such corporation. Provided that corporations organized for the purpose of or engaged in mining for iron, copper, mineral coal, silver or other ores or minerals in the Upper Peninsula, shall not be required to keep a transfer book of the stock thereof at such agency or office within this State. The failure to keep such list of stockholders, together with a statement of the number of shares of stock held by each, and to keep a transfer book of the stock at said office or agency in this State, shall be deemed a misuser of the charter of such corporation, and work a forfeiture thereof."

Act number 197 of the Public Acts of Michigan of the year 1893, at page 314.

The partial quotation of this Act appears on pages 16 and 17 of complainants' brief. Thus it appears that the legislature of Michigan in recognition doubtless of the well known fact, that mining corporations organized under its laws and doing business within its limits in the Upper Peninsula draw their capital from other States in the Union, and have their offices for the transaction of their general business, and the markets for the purchase and sale of their shares, outside of the State, does not require this class of corporations to keep stock books in Michigan at all. It is nowhere alleged in the Bill, as, indeed, it could not truthfully be, that this corporation in fact kept its stock books in Michigan.

Thus if a court should seek to impound such stock in Michigan and prevent its transfer, its order could only be directed to some officer of the Company in Michigan not having charge or control of its stock books, and the result might well be that after the service upon such officer in Michigan of the process of the Court directed to that end, the officer of the

Company, say in Massachusetts or New York, in charge of the stock books might have in good faith transferred the same stock to a buyer in good faith after the service of such process in Michigan. It does not seem likely that the Federal statute has reference to a class of property so circumstanced. The Michigan statutes expressly provide for this class of corporations that their general business office may be out of the State. Howell's Statutes, Vol. 1, Secs. 4077, 4105.

The Legislature of Michigan in prescribing the place where stock (of mining corporations such as is the Huron Mining Company), delinquent for assessment shall be sold, distinguishes between residents and non-residents of Michigan, permitting the stock of non-residents to be sold at the business office of the Company outside of Michigan, but requiring that of residents to be sold within the State.

See Howell's Annotated Statutes of Michigan, Volume 1, Section 4093.

As far as State regulation upon the subject of the *situs* of the stock of corporations of this class is concerned, the only regulation is that the stock may be levied upon (at least the stock of residents of Michigan) by attachment and execution in the State, while on the other hand there are no statutes fixing the *situs* of the stock for taxation purposes (in fact, this class of stock is not taxed in Michigan, the whole property of the corporation being subject to direct tax), and the foreign *situs* of the stock of non-residents seems to be distinctly recognized in permitting their stock when delinquent for assessment to be sold outside of Michigan and at the authorized foreign office of the Company where the transfer books of the Company are permitted to be kept.

The general rule of law to the effect that this class of property follows the domicile of the owner in the absence of statutory regulations covering the subject was adjudged by the Supreme Court of Michigan in Howard vs. Cassopolis, 35 Michigan. 471, where the Court said, speaking of the *situs* for taxation of National Bank stock:

"There is no proper sense in which the stock of a non-resident can be regarded as personal property *within the Village unless some statute has so declared.* If the Bank itself could be taxed no doubt its personal property would be within the Village, because following the domicile. But intangible property, like stock, must always follow the domicile, unless separated from it by positive law. The only laws of this State which create this separation define its extent, and do not authorize it as against residents of the same County who reside in another township." (The italics are mine).

The charter of the Village which in that case attempted to impose the tax authorized the taxation of "all property real and personal within the limits of said Village."

It is respectfully submitted that the decree below should be affirmed.

T. L. CHADBOURNE.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES,

AT

OCTOBER TERM, 1899.

JELLENIK *v.* HURON COPPER MINING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

No. 100. Argued and Submitted January 16, 1900.—Decided March 12, 1900.

A suit was brought in the Circuit Court of the United States for the Western District of Michigan by parties citizens of other States than Michigan against a Michigan mining corporation and certain individual defendants holding shares of stock in that corporation and being citizens residing in Massachusetts. The plaintiffs claimed that they were the real owners of certain shares of stock of the corporation the certificates of which were held by the Massachusetts defendants, and sought a decree removing the cloud upon their title to such shares and adjudging that they were entitled to them. *Held*,

1. That the defendants, citizens of Massachusetts, were necessary parties to the suit.
2. That they could be proceeded against in respect of the stock in question in the mode and for the limited purposes indicated in the eighth section of the act of Congress of March 3, 1875, 18 Stat. 470, c. 137, which authorized proceedings by publication against absent defendants in any suit commenced in any Circuit Court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought.

Statement of the Case.

3. That for the purposes of that act the stock held by the citizens of Massachusetts was to be deemed personal property "within the district" where the suit was brought. The certificates of stock were only evidence of the ownership of the shares, and the interest represented by the shares was held by the Company for the benefit of the true owner. As the habitation or domicil of the Company is and must be in the State that created it, the property represented by its certificates of stock may be deemed to be held by the Company within the State whose creature it is, whenever it is sought by suit to determine who is its real owner.

THIS is an appeal from a decree of the Circuit Court of the United States for the Western District of Michigan dismissing the bill of the plaintiffs, appellants here, for want of jurisdiction over some of the defendants who were held to be indispensable parties to the suit.

The case made by the bill is as follows: The plaintiffs are stockholders of the Huron Copper Mining Company and citizens of other States than Michigan. The Company is a Michigan corporation, the mines operated by it, all its other property, and its principal offices for business being at Houghton, Michigan, with a branch office at Boston, Massachusetts.

During the transactions complained of in the bill, the Board of Directors of the Company, whose members are the other defendants in this suit, were J. C. Watson, D. L. Demmon, Samuel L. Smith, H. J. Stevens and Johnson Vivian. Watson, Demmon and Stevens (the last-named having since died) were residents of Boston, Watson being President and Demmon Secretary and Treasurer of the Company. They had charge and control of the branch office in Boston. Smith resided at Detroit, Michigan, but was frequently in Boston. Vivian resided at Houghton, Michigan, and was for many years the general manager of the mining operations and the business of the Company at its mining location in Houghton County. Smith and Vivian disclaimed any connection with the alleged fraudulent transactions set forth in the bill, but were put upon their proof by the plaintiffs as to the matters stated therein.

In June, 1890, the Board of Directors made an assessment upon the capital stock of the Company of five dollars per share

payable on July 7th of that year. Notice of the assessment was given to the stockholders, accompanied by the statement that it would be sufficient to pay off all the indebtedness of the Company and leave a cash balance in its treasury of over thirty thousand dollars in addition to the unsold copper and other personal property of the Company.

It was alleged that upon receiving the amount of the assessment, two hundred thousand dollars, the Board of Directors, for the purpose of defrauding the plaintiffs and other stockholders, applied a portion of it to the payment of spurious debts of the Company, and wasted and misapplied another large portion, diverting it from the Treasury of the Company and from the purpose for which it was made, and applying it to the personal uses of the Directors and officers of the Company and their confederates.

On October 25, 1891, the Board of Directors made another assessment upon the stock of the Company of three dollars per share which aggregated one hundred and twenty thousand dollars. This assessment was made without the knowledge of the stockholders and at a time when, as appeared from the statement of the Board, there were sufficient assets of the Company exclusive of its mines and mining property to pay all its legal debts.

The bill charged that the Board of Directors or their representatives had disposed of the stock held by them before the making of the above assessments, and were the holders of none or at least a very small portion, except as they held stock purchased at a sale to be presently referred to as trustees for the plaintiffs and other stockholders, so that they had but a nominal, if any, interest in the Company; that they had so manipulated the assessments as to enable them to speculate in the stock of the Company to the detriment of the stockholders; that they had contracted fraudulent debts by means of false and illegal salaries, allowances and commissions to themselves, by making fraudulent contracts for the Company at extravagant prices, and by borrowing large sums of money for the Company at usurious interest, in which contracts and usurious loans the Directors and their confederates were interested as

contracting parties with the Company; that while acting as Directors and trustees for the stockholders they had betrayed their trust and mismanaged the affairs of the Company for their own profit and advantage; and that for many years they had continued the mining of copper at an apparent loss by reason of such fraudulent practices and mismanagement, and by false statements concealed the same from the stockholders.

On November 1, 1891, the plaintiff Jellenik, acting for himself and as attorney for several of the plaintiff stockholders, applied to Watson and Demmon for leave to examine the books of the Company for the purpose of determining the true state and condition of its affairs, but the demand was refused and for that reason Jellenik refused and advised his clients to refuse to pay the three dollar assessment.

On February 9, 1892, the assessment of three dollars not having been paid, a sale of the stock was made by order of the Directors at the office of the Company in Boston. The sale took place in the private office of the defendant Demmon, the Secretary and Treasurer of the Company. No one was present but the plaintiff Edwards and three other persons, besides the officers and Directors of the Company and their clerks. The Directors or their clerks did all the bidding on the stock, except the bids made for twenty shares, ten of which were purchased for each of the plaintiffs Dickey and Kennedy, trustees. One of the clerks in the office of the Company bid in 2725 shares, and Watson, the President of the Company, took 38,315 shares. The total number of shares sold was 41,060, or 1060 more than the Company possessed, its capital stock being 40,000 shares.

Notwithstanding the assessment of five dollars and the second assessment of three dollars, which were made upon notice to the plaintiffs and other stockholders that they would not only be ample to pay all the indebtedness of the Company but would leave its property free and clear with a large balance in the treasury, and notwithstanding the defendants Watson and Demmon in making the sale of the stock under the three dollar assessment required Dickey and Kennedy, trustees, and other stockholders not in conspiracy with the defendants, to pay the

full amount of the assessment on such sale, Watson and Demmon, the bill charged, either fraudulently sold the stock upon that sale to themselves individually or to their fellow conspirators for a mere pittance, without realizing the assessment thereon, or they realized the money and squandered it and allowed the indebtedness of the Company to be put in judgment in Houghton County, Michigan, with the fraudulent intent through and by that means to buy in and absorb the property and render valueless the stock of the plaintiffs.

In carrying out this scheme, it was alleged that the Directors permitted judgments to be taken against the Company for $180,230.08, of which amount $106,251.84 was a judgment by the defendant Demmon to himself, growing out of illegal transactions with himself as a Director and officer. All the judgments were obtained on the same day, December 30, 1891, by consent between the attorneys appearing for the Company and those for the judgment creditors, Demmon's judgment having been fraudulently procured by using his power and influence to prevent any investigation as to the honesty and legality of his claim.

All of the judgments, except the one procured by Demmon, were assigned to J. B. Sturgis, trustee, of Houghton, Michigan, and on May 7, 1892, the mining property of the Company was sold under the judgments so assigned to Sturgis and a certificate of sale given him by the sheriff of Houghton County. On August 21, 1893, the sheriff of that county, in pursuance of the certificate of sale, executed a sheriff's deed of the property to Sturgis. This deed was duly recorded August 24, 1893, and so far as the records showed, no transfer of title to the property had since been made by Sturgis.

It was alleged that the purpose of making the fraudulent assessment and pretended sale of stock was to exclude the plaintiffs and other stockholders from any right of inquiry into the affairs of the Company; that the purpose of the Directors and officers in causing the property of the Company to be seized and sold by legal process for spurious and fraudulent debts was to extinguish the title of the corporation and of its stockholders to the mining property and to vest the same in

the Directors and their confederates; and that the pretended sale of stock was made in defiance of the protest of the plaintiffs and other stockholders of the Company and upon notice given to the Directors, at the time and place of the sale of the stock, of the fraudulent character of the assessment and of the proposed sale, like notice being given to all purchasers before the making of the sale.

It was stated in the bill that on September 15, 1892, the plaintiffs filed in the court below a bill similar to the one herein. A plea and demurrer were interposed by Watson and upon a hearing had thereon by consent the court held that the bill was defective in its jurisdictional allegations, and declined to proceed further until one was filed having proper allegations and giving it jurisdiction to act.

The present bill contained this paragraph:

"Your orators allege that the shares of stock in the said defendant Company are personal property, and its location is where the Company is incorporated and nowhere else, and that the *locus in quo* of the stock of the defendant Company has been since its incorporation at Houghton County, Michigan, that being its principal office for business and place of incorporation, and this bill is filed to remove any incumbrances, lien or cloud upon the title of your orators in said personal property thus located caused by the fraudulent acts of the defendants, as herein alleged, and for such other and further relief as the nature of the case shall require."

The plaintiffs also averred that they filed their bill in their own behalf because the Company, acting fraudulently through its Board of Directors and controlled particularly by the defendants Watson and Demmon, refused them any information with regard to its affairs or to allow them to see the books or to procure a statement therefrom, and because there was no other mode of relief, as there were no agents of the Company authorized to act for the relief of stockholders except the defendants thus fraudulently conspiring to break down and ruin its stock.

The relief asked was that a receiver be appointed to take possession of all the property and assets of the Company, wind

up its business and make sale of its property; that the Directors and officers, their agents, servants, attorneys and representatives, be restrained and enjoined from in any manner intermeddling with the property and business of the Company, from levying upon, attaching, seizing by execution or selling, or causing to be levied upon, attached, seized by execution or sold, any of the property of the Company, and from prosecuting by any mesne or final process any claim or claims whatever against the Company, and also from cancelling any of the stock of the plaintiffs as set forth and described in the bill, and issuing new stock therefor to the pretended purchaser thereof under the pretended sales for delinquent assessment, and if such cancellation had been attempted by the defendants or any of them and new certificates issued therefor to the defendants or any of them or their confederates, that they be restrained from further transferring the same upon the books of the Company until the final order of the court; that an account might be taken under the direction of the court of the loss occasioned to the Company and its stockholders by means of the covin, breach of trust, mismanagement and neglect of duty and embezzlement of the Directors and their confederates, and of the profits made by the Directors and officers or any of them, and of their confederates or any of them, by means of such covin, deceit, fraud, unlawful confederacy, conspiracy and misappropriation of assets, and that the Directors and officers and every of them be ordered and decreed to pay over to such receiver or the court the entire sum or sums so ascertained; that the court might adjudge and decree that the pretended sale made on the 9th day of February, 1892, was a nullity and passed no title to any of the stock, that Watson and Demmon and their co-Directors and confederates be adjudged to hold the stock which they pretended to acquire at such sale in trust for the plaintiffs and other stockholders of the Company, and that the latter then held respectively in the Company the respective shares of stock which they held prior to the date of the sale, and that by the decree of the court any cloud upon the title of such stock of the plaintiffs might be removed therefrom; and that such other and further relief be granted as the

exigencies of the case might require and to the court should seem meet in the premises.

Such was the case made by the averments in the bill.

Mr. F. O. Clark for appellants.

Mr. T. L. Chadbourne for appellees.

Mr. Justice Harlan, after stating the facts, delivered the opinion of the court.

Process was served upon the Huron Copper Mining Company and the other defendants residing in Michigan. Watson, Demmon and Smith, being non-residents, were proceeded against by publication, but they failed to appear. The Company appeared and pleaded to the jurisdiction of the court: 1. That Watson, Demmon and Smith were indispensable parties to the suit, but not inhabitants of the Western District of Michigan, and that no subpœna or process of any kind had been served upon them in the district, nor had they voluntarily appeared and submitted themselves to the jurisdiction of the court. 2. That the stock of the Huron Copper Mining Company belonging to the complainants was not personal property within the district.

The plea was sustained and the bill was dismissed without prejudice to the bringing of such further suit by the complainants as they might be advised.

The Circuit Court correctly held that the defendants Watson, Demmon and Smith were necessary parties to the controversy made by the bill. 82 Fed. Rep. 778. But could they not have been brought before the court in the mode and for the limited purposes indicated in the eighth section of the act of March 3, 1875, entitled "An act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of cause from State courts and for other purposes," which section provides:

"§ 8. That when in any suit, commenced in any Circuit Court of the United States, to enforce any legal or equitable

lien upon or claim to, or *to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought*, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants, without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district. And when a part of the said real or personal property against which such proceeding shall be taken shall be within another district, but within the same State, said suit may be brought in either district in said State; *Provided, however*, That any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said Circuit Court, and thereupon the said court shall make an order setting aside the judgment therein, and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded

with to final judgment according to law." 18 Stat. 470, 472, c. 137.

That section was expressly saved from repeal by the fifth section of the act of March 3, 1887, 24 Stat. 552, 555, c. 373, as corrected by section 5 of the act of August 13, 1888, 25 Stat. 433, 436, c. 866, and is in full force. *Mellen* v. *Moline Malleable Iron Works*, 131 U. S. 352.

Prior to the passage of the above act of March 3, 1875, the authority of a Circuit Court of the United States to make an order directing a defendant—who was not an inhabitant of nor found within the district and who did not voluntarily appear—to appear, plead, answer or demur, was restricted to suits in equity brought to enforce legal or equitable liens or claims against real or personal property within the district. Rev. Stat. § 738. But that act extended the authority of the court to a suit brought "to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought."

One of the objects of the present suit was to remove an incumbrance or cloud upon the title to certain shares of the stock of a Michigan corporation. No question is made as to the jurisdiction of the court so far as it rests upon the diverse citizenship of the parties. The plaintiffs alleged that they were the equitable owners of that stock, although the legal title was in certain of the defendants. The relief asked was a decree establishing their rightful title and ownership; and in order that such a decree might be obtained the defendants referred to were ordered to appear, plead, answer or demur; but as they refused to do so, the Circuit Court decided that it could not proceed further. That court was of opinion that "the shares of stock in question are not personal property within the district within the purview of the statute of the United States authorizing the bringing in by publication of notice to non-resident defendants who assert some right or claim to the property which is the subject of suit." 82 Fed. Rep. 778, 779. The proper forum, the court said, for the litigation of the question involved would be in the State of which the defendants were citizens.

The question to be determined on this appeal is, whether the stock in question is personal property within the district in which the suit was brought. If it is, then the case is embraced by the act of 1875, c. 137, and the Circuit Court erred in dismissing the bill.

By the statutes of Michigan providing for the incorporation of companies for mining, smelting and manufacturing iron, copper, silver, coal and other ores or minerals, it is provided: "The stock of every such corporation shall be deemed personal property, and shall be transferred only on the books of the company in such form as the by-laws direct or as the directors shall prescribe; and such corporation shall at all times have a lien upon the stock of its members for all the debts due from them to such corporation." By the same statutes it is provided: "It shall be lawful for any corporation formed under the provisions of this act to conduct its mining and manufacturing business in whole or in part at any place or places in the United States (or any foreign country); and any such corporation shall be subject to the laws of this State in regard to corporations, so far as the same shall be applicable to corporations formed under this act." "It shall be lawful for any company associating under this act to provide in the articles of association for having the business office of such company out of this State, and to hold any meeting of the stockholders or board of directors of such company at such office so provided for; but every such Company having its business office out of this State shall have an office for the transaction of business within this State, to be also designated in such articles of association." c. 266. "Any share or interest of a stockholder in any bank, insurance company, or any other joint stock company that is or may be incorporated under the authority of, or authorized to be created by any law of this State, may be taken in execution and sold in the following manner: The officer shall leave a copy of the execution certified by him with the clerk, treasurer or cashier of the company, if there be any such officer, and if not, then with any officer or person who has, at the time, the custody of the books and papers of the corporation; and the property shall be considered seized on execution when such copy is left."

"If the shares or interest of the judgment debtor shall have been attached in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which shall have accrued after the levying of the attachment." c. 275. "In attaching real estate or any right or interest in land, it shall not be necessary that the officer should enter upon the land or be within view of it; and in attaching shares of stock, or the interest of a stockholder in any corporation organized under the laws of this State, the levy shall be made in the manner provided by law for the seizure of such property on execution." 1 and 2 Howells' Anno. Stat. Michigan, (1882) §§ 4094, 4097, 4105, 7697, 7698, 7701, 7993; 2 Compiled Laws, Mich. 1897, pp. 2197, 2200; 3 Ib. 3131-2, 3187.

These provisions make it clear that by the law of Michigan the shares of stock in the defendant Company are to be deemed personal property, transferable on the books of the Company; and that the share or interest of a stockholder may be taken in execution or reached by attachment, a copy of the execution or attachment being left by the officer with the clerk, treasurer or cashier of the Company. The authority of the State to establish such regulations in reference to the stock of a corporation organized and existing under its laws cannot be doubted. We need not discuss, in the light of the authorities, whether the shares of stock in the defendant Company may not be accurately described as chattels or choses in action, or property in the nature of choses in action. Chief Justice Shaw, in *Hutchins* v. *State Bank*, 12 Met. 421, 426, said: "If a share in a bank is not a *chose in action*, it is in the nature of a *chose in action*, and what is more to the purpose, it is personal property." The Court of Appeals of New York, speaking by Judge Comstock, held certificates of stock to be simply muniments and evidence of the holder's title to a certain number of shares in the property and franchises of the corporation of which he is a member. *Mechanics Bank* v. *New York & New Haven Railroad*, 3 Kernan, 627; Angell & Ames on Corp. § 560. It is sufficient for this case to say that the State under whose laws the Company came into existence has declared, as it lawfully might, that such stock is to be deemed personal prop-

erty. That is a rule which the Circuit Court of the United States sitting in Michigan should enforce as part of the law of the State in respect of corporations created by it. The stock held by the defendants residing outside of Michigan who refused to submit themselves to the jurisdiction of the Circuit Court being regarded as personal property, the act of 1875 must be held to embrace the present case, if the stock in question is "within the district" in which the suit was brought. Whether the stock is in Michigan so as to authorize that State to subject it to taxation as against individual shareholders domiciled in another State, is a question not presented in this case, and we express no opinion upon it. But we are of opinion that it is within Michigan for the purposes of a suit brought there against the Company — such shareholders being made parties to the suit — to determine whether the stock is rightfully held by them. The certificates are only evidence of the ownership of the shares, and the interest represented by the shares is held by the Company for the benefit of the true owner. As the habitation or domicil of the Company is and must be in the State that created it, the property represented by its certificates of stock may be deemed to be held by the Company within the State whose creature it is, whenever it is sought by suit to determine who is its real owner. This principle is not affected by the fact that the defendant is authorized by the laws of Michigan to have an office in another State, at which a book showing the transfers of stock may be kept.

It is suggested that the requirement in the act of 1875 that a copy of the order of publication "shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be," is inapplicable here, because no one in Michigan is alleged in the bill to have *possession* of the shares in question. But the bill does show that the property represented by the certificates of shares is held by a Michigan corporation which being subject personally to the jurisdiction of the court may be required by a final decree in a suit brought under the act of March 3, 1875 to cancel such

certificates held by persons outside of the State and regard the plaintiffs as the real owners of the property interest represented by them.

It is also contended that the words in the act of 1875, "when a part of said property shall be within another district but within the same State, said suit may be brought in either district in said State," indicate that the act had reference only to tangible personal property capable of being located in more than one district. This would be too narrow an interpretation of the statute. No reason can be suggested why suits involving the title to shares of the stock of a corporation or company should have been excluded from the operation of the statute. On the contrary, the statute contemplated that there might be cases involving the title to personal property not in the actual manual possession of some person; for the direction is that the order of the court be served upon the person or persons in possession or charge of the property, "if any there be." The corporation being brought into court by personal service of process in Michigan, and a copy of the order of court being served upon the defendants charged with wrongfully holding certificates of the stock in question, every interest involved in the issue as to the real ownership of the stock will be represented before the court. We think the Circuit Court may rightfully proceed under the act of 1875, for the purpose of determining such ownership, and that in dismissing the bill error was committed.

The decree is reversed and the cause is remanded with directions for such further proceedings as are consistent with this opinion and with law.

MR. JUSTICE BROWN and MR. JUSTICE SHIRAS did not participate in the decision of this case.